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Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: Whether Texas Government Code Section 2054.5191(a-1) requires a member of the board of directors of an appraisal district to complete a certified cybersecurity training program at least once per year

Dear General Paxton:

House Bill 3834 became effective on June 14, 2019, after it was passed during the Texas Legislature's eighty-sixth regular session and signed by the Governor. Among its provisions related to state cybersecurity training, House Bill 3834 created Texas Government Code Section 2054.5191 entitled "Cybersecurity Training Required: Certain Employees." Section 2054.5191(a-1) states:

At least once per year, a local government shall identify local government employees who have access to a local government computer system or database and require those *employees and elected officials of the local government* to complete a cybersecurity training program certified under Section 2054.519 or offered under Section 2054.519(f).

TEX. GOV'T CODE § 2054.5191(a-1) (emphasis added). It is unclear whether the board of directors of appraisal districts are considered "employees" or "elected officials" for purposes of cybersecurity training under Section 2054.5191(a-1). To address the confusion surrounding the application of Section 2054.5191(a-1) to members of the board of directors of appraisal districts, I hereby request a formal legal opinion on the matter.

Texas appraisal districts are governed by a board of directors. TEX. TAX CODE § 6.03(a). Appraisal districts are governed by five directors under the default rules but can be governed by up to thirteen directors upon action of the appraisal district's taxing units. See TEX. TAX CODE § 6.03(a); 6.031(a). "Members of the board of directors . . . are *appointed* by vote of the governing bodies" TEX. TAX CODE § 6.03(c) (emphasis added). Each taxing unit may nominate one candidate for each position to be filled on the board of directors. TEX. TAX CODE § 6.03(g). The voting entitlement of each taxing unit is proportional to the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year. TEX. TAX CODE § 6.03(d). Directors may not receive compensation for their service but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties. TEX. TAX CODE § 6.04.

An argument can be made that the board of directors are "elected officials" to the extent that they are elected by the taxing units of the appraisal district. This definition of "elected official," however, appears to conflict with a previous attorney general opinion, case law, and the general definitions of "appointment" and "elective office."

Opinion No. JM-166 addressed a very similar question—is the selection process contained in Section 6.03 of the Property Tax Code governed by the Texas Elections Code? It was determined that Section 6.03 of the Property Tax Code was not governed by the Texas Elections Code. Opinion No. JM-166 concluded that, by its very terms, section 6.03(c) of the Texas Tax Code provides that "members of the board of directors are *appointed* by vote of the governing bodies" Opinion No. JM-166, p. 3. As support for this conclusion, Opinion JM-166 cited a case that referred to appraisal district board of directors as "a board consisting of *appointees*." Opinion JM-166, p. 3 (emphasis added) (citing *Colony Municipal Utility District No. 1 of Denton County v. Appraisal District of Denton County*, 626 S.W.2d 930, 932 (Tex. App.—Fort Worth 1982, writ ref'd n.r.e.).

Further lending support to the argument that members of the board of directors of appraisal districts are not considered "elected officials" under Section 2054.5191(a-1), is the ordinary definition and meaning of the terms "appointment" and "elective office." Blacks Law Dictionary defines the word "appointment" as: "[t]he designation of a person, such as a nonelected public official, for a job or duty; esp., the naming of someone to a nonelected public office." Black's Law Dictionary 43 (4th pocket ed. 2011). The term "elective office" is defined as: "[a]n office that is filled by popular election rather than by appointment." Black's Law Dictionary 262 (4th pocket ed. 2011).

In light of the above, I hereby request your formal legal opinion as to the following:

1. Does Texas Government Code Section 2054.5191(a-1) require a member of the board of directors of an appraisal district to complete a certified cybersecurity training program at least once per year?

Thank you for your time and consideration of this request. Please feel free to contact my office should you need any additional information or details regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. David Holmes', with a long horizontal flourish extending to the right.

R. David Holmes
County Attorney
Hill County, Texas

cc: Mr. Mike McKibben, Chief Appraiser
Mr. Robert Meyers, Esq.
Mr. Matthew Tepper, Esq.