THE ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

August 26, 1988

Honorable Hugh Parmer
Chairman
Committee on Intergovernmental
Relations
Texas State Senate
P. O. Box 12068
Austin, Texas 78711

LO-88-100

Dear Senator Parmer:

Attorney General Letter Opinion LO-88-66 (1988) concluded that the provision in section 6B(e), article 1118x, V.T.C.S., for four year terms for board members of metropolitan rapid transit authorities created under that article violated the two-year term limitation in article XVI, section 30, of the Texas Constitution.

You ask:

> Is the additional prohibition in Sec. 6B(e), which limits members to no more than 'two consecutive four-year terms', still applicable?

Section 6B(e) provides:

> The terms of office of any members of the board appointed after the confirmation and tax election and after the effective date of this Act are four years, except than in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the effective date of this Act, if an even number is to be appointed by an agency, and a bare majority of the first members appointed by the agency, if an odd number greater than one is to be appointed by an agency, are two years. In addition, the appointing agency may shorten the initial terms to make the

> expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person must be qualified voter residing within the boundaries of the authority. Except as provided by Subsection (c) of this section, a person may not serve more than two consecutive four-year terms as a member of the board. (Emphasis added.)

It is a primary rule of statutory construction that statutory language should be construed so as to give effect to the legislative intent even if such construction requires a departure from the literal words of the statute. See Sweeny Hospital District v. Carr, 378 S.W.2d 40 (Tex. 1964); 53 Tex. Jur. 2d Statutes, § 125.

We think the intent of the legislature in enacting the last sentence of section 6B(e) was to limit board members to consecutive terms totaling eight years.

The legislature worded the limitation as being to "two consecutive four year terms" consistently with the provision in section 6B(e) that board members serve four year terms. Our conclusion in Attorney General Letter Opinion LO-88-66 that the four-year term provision was unconstitutional does not require us to conclude that the limitation to "two consecutive four-year terms" is also unconstitutional. Every reasonable presumption of the constitutionality of a statute is to be made in its construction. See County of Cameron v. Wilson, 326 S.W.2d 162 (Tex. 1959); 12 Tex. Jur. 3d Constitutional Law § 40. We find no constitutional inhibition to construing the limitation as, in effect, one to consecutive terms totaling eight years.

Also, we think such construction is clearly more in accord with the legislative intent than one which reads "two consecutive four-year terms" as "two consecutive two-year terms," thus halving the allowable time of continuous service.

Therefore, in answer to your first question, it is our opinion that the limitation in section 6B(e) to "two consecutive four year terms" for transit authority board members should be construed as limiting board members to consecutive terms totaling eight years.

You also ask:

> Would service on the transit authority's interim board be applied to any consecutive term limitation that might exist?

By "interim board" we presume you mean the board appointed pursuant to section 4 of article 1118x, which serves until board members are appointed under section 6B after the confirmation and tax election.

We answer your question in the negative. The "consecutive term limitation" of section 6B(e) clearly applied, as written, only to the board members appointed under section 6B(e), since it referred to four-year terms. Section 4, in subsection (a)(1), expressly limits interim board members' terms to two years. The section 6B(e) limitation could not, as written, have applied to the two-year terms under section 4. Although as discussed above, the conclusion of Attorney General Opinion LO-88-66 necessitates our reading the section 6B(e) limitation as being to consecutive terms totaling eight years, we believe that the legislature's clearly expressed intent that the limitation apply only to terms of appointments under section 6B and not to interim appointments under section 4 need not and should not be thwarted by our construction of those provisions.

Very truly yours,

Sarah Woelk

Sarah Woelk, Chief
Letter Opinion Section

Rick Gilpin

Rick Gilpin, Chairman
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APPROVED: OPINION COMMITTEE

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