



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 4, 1992

Honorable Bill Sims
Chairman
Natural Resources Committee
Texas State Senate
P. O. Box 12068
Austin, Texas 78711

Letter Opinion No. 92-32

Re: Status of Dallas County
Levee Improvement District No. 1
(ID# 16639)

Dear Senator Sims:

You have requested our opinion regarding the status of the Dallas County Levee Improvement District No. 1 (hereafter "the district"). The district was created in 1916 pursuant to statutes which are presently codified as chapter 57 of the Texas Water Code. *See Morton v. Thomson*, 15 S.W.2d 1067 (Tex. Civ. App.—El Paso 1929, no writ). In 1991, the Seventy-second Legislature enacted House Bill 2570, Acts 1991, 72d Leg., ch. 356, Vernon's Sess. Law Serv. at 1403-04, which provides, in pertinent part:

Section 2. BOARD. (a) The district is governed by a board of five directors elected as prescribed by Sections 57.058-57.061, Water Code, except that the board in office preceding the date of the initial election under this Act shall establish the five precincts from which the directors are elected.

....

Section 5. APPLICATION OF OTHER LAW. (a) Except as otherwise provided by this Act, Chapter 57, Water Code, applies to the district, except that the board has the powers and duties delegated to the commissioners court and county judge under that chapter. However, the commissioners court shall continue to appoint the directors until the initial directors' election is held under this Act.

....

Section 7. INITIAL ELECTION. (a) The first election under this Act shall be held on May 2, 1992.

....

(d) The terms of the appointed directors expire when the initially elected directors take office.

You indicate that the district is located in the Trinity River flood plain and has no residents. As a result, no election was held on May 2, 1992, and none is possible under present circumstances. You ask whether the current board of the district "may continue to serve until corrective legislation is passed in the next session."

In Attorney General Opinion DM-140 (1992), this office dealt with a somewhat similar situation. There, an election scheduled for 1982 had never been held. The statute provided, however, that "the commissioners court serving as the governing board of the" district "shall continue in office . . . until the first elected board members have qualified for office." We concluded that "the *present* commissioners court . . . makes up the current board of the district." (italics in original). Here, House Bill 2570 provides that "the commissioners court shall continue to appoint the directors until the initial directors' election is held under this Act," and that "the terms of the appointed directors expire" only "when the elected directors take office." Under the circumstances you present it seems clear that the Dallas County Commissioners Court should "continue to appoint the directors" pursuant to the relevant provisions of chapter 57 of the Water Code until elected directors take office or until further action by the legislature.¹

S U M M A R Y

Since, under the facts presented, no election has been or can be held in the Dallas County Levee Improvement District No. 1, the Dallas County Commissioners Court should continue to appoint the directors of the district pursuant to chapter 57, Water Code.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

¹Since it is our understanding that the result we reach here is the same as it would be if House Bill 2570 were found to be unconstitutional, we do not think it necessary to address here the constitutional questions you raise concerning that bill.