



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 21, 1995

Honorable Robert Hill Trapp
Criminal District Attorney
San Jacinto County
P.O. Box 430
Coldspring, Texas 77331

Letter Opinion No. 95-016

Re: Whether a person must be a resident of a rural fire prevention district in order to be eligible to be appointed to the board of fire commissioners under section 794.033 of the Health and Safety Code (ID# 29256)

Dear Mr. Trapp:

You ask whether a person must be a resident of a rural fire prevention district in order to be eligible to be appointed to the board of fire commissioners under section 794.033 of the Health and Safety Code. Chapter 794 of the Health and Safety Code provides for the establishment of rural fire prevention districts.¹ Section 794.033 provides that the commissioners court of a county in which a single-county district is located shall appoint a five-member board of fire commissioners to serve as the district's governing body. Health & Safety Code § 794.033(a). Section 794.034 provides that the governing body of a district located in more than one county consists of a five-person board of elected members.

As you point out, subsection (e) of section 794.033 provides that to be "eligible for appointment to the board of a district with a population of 450,000 or more that has not established a public health district under Chapter 121 [of the Health and Safety Code], a person must be a resident of the district."² There is, however, no such eligibility requirement in section 794.033 for appointment to the board of fire commissioners of a district that does not fall within subsection (e). In light of the absence of such a residency requirement in chapter 794, you ask whether article XVI, section 14 of the Texas Constitution, which provides that "[a]ll district or county officers [shall reside] within their districts or counties," prohibits a nonresident of such a district from being a member of a board of fire commissioners.

We conclude that article XVI, section 14 requires an appointee to be a resident of the county in which the district is located, but that it does not require that the appointee

¹Such districts are specifically authorized by article III, section 48-d of the Texas Constitution.

²Section 794.034 also requires that a member of a board of fire commissioners be a resident of the district. See Health & Safety Code § 794.034(c).

reside in the district for the following reasons. Section 794.031 specifically provides that a district is a political subdivision of the state. In Attorney General Opinion DM-114 (1992), this office concluded that a member of a board of fire commissioners appointed under section 794.033 is a county officer for purposes of article V, section 24 of the Texas Constitution and section 87.012 of the Local Government Code pertaining to the removal of county officers. The conclusion that a board member is a county officer was based on the authority of a board of fire commissioners and the close working relationship between the county and the board as provided in chapter 794. We believe that the reasoning of that opinion applies with equal force here in the context of article XVI, section 14 and that a board member is a county officer for purposes of that constitutional provision.

Our analysis does not end here, however. Courts have held that a school district trustee of an independent school district is a county officer for purposes of article XVI, section 14. See *Whitmarsh v. Buckley*, 324 S.W.2d 298 (Tex. Civ. App.--Houston 1959, no writ); *Prince v. Inman*, 280 S.W.2d 779 (Tex. Civ. App.--Beaumont 1955, no writ). Significantly, in *Whitmarsh v. Buckley*, the court held that article XVI, section 14 was not controlling because "[i]t has the effect of creating a vacancy only if the trustee becomes a non-resident of the county. The appellees in this case continue to reside in the county where the school district is located." 324 S.W.2d at 301. Thus, in essence, the court concluded that article XVI, section 14 requires a school district trustee to live in the county in which the school district is located, but does not require the school district trustee to live within the school district itself. See also Attorney General Opinion H-1069 (1977) (concluding that a justice of the peace may move his or her residence to a different precinct within the county without vacating office under article XVI, section 14).³

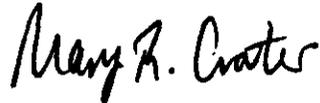
On the basis of Attorney General Opinion DM-114, we conclude that a member of a board of fire commissioners appointed under section 794.033 is a county officer for purposes of article XVI, section 14. *Whitmarsh v. Buckley* compels us to conclude that a board member, as a county officer, must reside in the county in which the district is located but need not reside in the district. Of course, this conclusion does not apply to a board member appointed under subsection 794.033(e).

³Letter Opinion No. 92-19 (1992) is misleading to the extent it suggests that a school trustee vacates office under article XVI, section 14 if he or she moves from a residence in the school district to another residence in the county outside of the school district.

S U M M A R Y

A person appointed to a rural fire prevention district board of fire commissioners under section 794.033 of the Health and Safety Code is a county officer for purposes of article XVI, section 14 of the Texas Constitution, and therefore must reside in the county in which the district is located but need not reside in the district. This conclusion does not apply to a board member appointed under subsection (e) of section 794.033, who must be a resident of the district pursuant to the terms of that subsection.

Yours very truly,

A handwritten signature in black ink that reads "Mary R. Crouter". The signature is written in a cursive style with a large initial "M".

Mary R. Crouter
Assistant Attorney General
Opinion Committee