



Texas House of Representatives

ERNESTINE V. GLOSSBRENNER

COMMITTEES:
PUBLIC EDUCATION, CHAIR
ELECTIONS

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Opinion Committee

MEMO TO: Madeleine Johnson

FROM: Ernie Glossbrenner

TOPIC: Dallas County Community College District

DATE: September 23, 1991

Enclosed are copies of a letter and support documents which I sent to Gen. Morales concerning a request for an Attorney General's opinion on a proposal to expand the size of the board of trustees of the district.

I realize time is short and you are terribly busy, but any assistance you can provide will be very much appreciated. Please contact my office should you need additional information concerning this matter.

**ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY**

Texas House of Representatives

ERNESTINE V. GLOSSBRENNER

13683

COMMITTEES:
PUBLIC EDUCATION, CHAIR
ELECTIONS

September 23, 1991

The Honorable Dan Morales
Office of the Attorney General
Price Daniel, Sr. Building
209 W. 14th
Austin, Texas 78701

Dear General Morales:

I have been contacted on behalf of the Dallas County Community College District concerning a proposal to expand the size of its board from its current seven member composition. The purpose of the expansion would be to allow for the creation of an Hispanic and possibly a Black district within the confines of the college district. However, a clarification from your office is necessary in order for the board to proceed.

I am enclosing a copy of a letter I received which explains the situation in some detail. Since the board has already scheduled public hearings for as early as October 22nd, 1991 regarding the drawing of trustee districts, a response from you at the earliest possible time is essential. Would it be possible for your staff to look at this problem and respond with an Attorney General's Opinion within that time frame?

A copy of this letter as well as the attachments has been sent to Ms. Madeleine Johnson in the Opinions office. I will appreciate your assistance and will be happy to provide any additional information which might be necessary concerning this matter. Thank you very much.

Yours Very Truly,



Ernestine V. Glossbrenner

September 23, 1991

Attorney General of the State of Texas
Attn: Ms. Madeleine Johnson
Opinions Committee
Price Daniel, Sr. Building
Austin, Texas 78701

RE: The Authority of the Board of Trustees of Dallas County Community College District to expand board member size to permit the drawing of one or more additional single-member districts.

Dear Ms. Johnson:

This letter is submitted on behalf of the Committee on Public Education of the Texas House of Representatives. As Chairman of that Committee, I request an opinion of the Attorney General's Office regarding whether Dallas County Community College District (DCCCD) is authorized under state law to increase the size of its Board of Trustees to permit the drawing of one or more additional single-member trustee districts.

DCCCD is a county-wide community college district that contains a city (Dallas) which, according to the 1990 federal decennial census, has a population of more than 800,000 residents. Therefore, DCCCD presently operates under section 130.0821 of the Education Code. The Board of Trustees of DCCCD consists of seven trustees, all of whom are elected from single-member districts. Section 130.0821 was adopted in 1977 and required that before January 1, 1978, the board of trustees "shall divide the district into seven compact trustee districts." (Emphasis added). Subsection (e) of Section 130.0821 requires that following the publication of the federal decennial census, the board shall redivide the district into seven trustee districts if such census data indicates that the population of the most populous trustee district exceeds the population of the least populous district by more than 10 percent." (Emphasis added).

In compliance with Section 130.0821, the Board of Trustees has examined its existing trustee districts in light of 1990 federal decennial census data and determined that the population deviation between the most populous and least populous districts exceeds ten percent. Therefore, the Board of Trustees has initiated a process for taking public testimony regarding the drawing of trustee

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districts. In order to comply with Section 276.006 of the Election Code, the Board is required to adopt new districts before December 4, 1991. Public hearings are scheduled for October 22, 1991 and October 24, 1991.

Representatives of the Latino community in Dallas County have urged that the Board of Trustees expand in size from seven to nine members. These representatives indicate that, based on their review of census data, it will not be possible at seven districts to draw any district with a sufficient Hispanic population to assure that minority group the ability to elect a person of their choice. These persons indicate that, based on their review of census data, it will be possible to draw a district in which Hispanic voters can elect the person of their choice if there are nine districts and, possibly, to draw a second trustee district where black voters could have this same opportunity.

The Board of Trustees would like to consider whether to increase the size of the Board to nine trustees. It intends to take testimony on this possibility during the public hearings. The staff of the District has been directed to prepare preliminary plans for seven and nine trustee districts to be presented to the Board and the public for comment at these public hearings. However, the Board cannot adopt a nine district configuration unless allowed by state law.

The legislative history behind adoption of what is now Section 130.0821 of the Education Code makes clear that the purpose of the enactment in 1979 was to require election of the District's seven trustees from single-member districts rather than at-large. The Board of Trustees of DCCCD supported the legislation at the time and does not intend any variance from the objective of using single-member districts. However, the issue is whether the perhaps unintended effect of Section 130.0821 may also have been to restrict the size of the Board as well as the manner of election. I do not believe that this result is a necessary result if you consider the Education Code as a whole.

Two arguments are presented in support of the DCCCD Board's authority to increase its size. These are:

1. The provisions of Section 130.0821 regarding division of the district into seven districts should be read in conjunction with other Education Code provisions that expressly permit a district to increase in size from seven to nine trustees. Section 130.082 is the general statute applicable to junior college districts and authorizes a Board in subsection (d) to increase in size

from seven to nine members. Section 130.0821 is an exception to the general statute insofar as 130.082 provides for at-large election, but, if read together, these two sections of the Education Code could authorize an increase to nine members if the District is divided into at least seven single-member districts. DCCCD has advised me that it does not intend to adopt any plan with at-large positions. Therefore, under this interpretation, the Board could expand to nine trustees while simultaneously retaining its all single-member election structure as provided by Section 130.0821 when adopted.

2. A junior college district operating under Section 130.082 now can adopt an all single-member structure under Section 130.0822.¹ Therefore, if DCCCD can make Section 130.082 applicable, the District can rely on Section 130.0822 for authority to use all single-member districts. Subsection (h) of Section 130.082 provides:

"[A]t any time thereafter [the effective date of the Act] the governing board may make this section in its entirety applicable to it and its district by appropriate resolution or order, and thereby permanently cancel the effect of the aforesaid particular provisions of other laws."

Your office previously has explained that the purpose of Section 130.082 was to create a uniformity among junior college districts. See, Tex. Atty. Gen. Opin. No. M-1081 (1972). Section 130.0821 is a "particular provision of other laws" inconsistent with Section 130.082. Even though the statute now codified as Section 130.0821 was adopted later in 1977, the purposes behind both statutes (i.e., Section 130.082 ["uniformity"] and Section 130.0821 [single-member districts]) can be achieved if DCCCD can utilize subsection (h) in the manner described.

¹ It must be noted that Section 130.0822, subsection (1) provides that the Section does not apply to districts operating under Section 130.0821. However, if DCCCD first can adopt a resolution to operate under Section 130.082, it no longer is subject to this restriction and should be free to adopt an all single-member plan under Section 130.0822.

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When there is a conflict between a general and special provision, the statutes should be construed so that effect is given to both. Code Construction Act. Gov't Code § 31.026(a). In this case, effect can be given to both sections 130.0821 and 130.082 by permitting a section 130.0821 seven district single-member district board to expand to nine single-member districts under section 130.082.

The goal of achieving fairly drawn trustee districts that will afford an opportunity for Hispanic and African-American voters to elect the persons of their choice is an appropriate objective. I ask if state law can be read to permit the Dallas County Community College District to expand its size to achieve this goal.

An answer to this inquiry is needed by no later than October 25, 1991 to permit timely action by the DCCCD Board. Your cooperation is greatly appreciate.

Sincerely,



Ernestine V. Glossbrenner
State Representative