



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 20, 2022

The Honorable Jaime A. Iracheta  
Maverick County Attorney  
208 Converse Street  
Eagle Pass, Texas 78852

**Opinion No. KP-0415**

Re: Whether section 51.221 of the Water Code authorizes a representative of a limited liability company to vote in an election conducted by Maverick County Water Control & Improvement District No. 1 (RQ-0448-KP)

Dear Mr. Iracheta:

You ask about the authority of a limited liability company to vote in a water control and improvement district election under section 51.221 of the Water Code.<sup>1</sup> You state that Maverick County Water Control & Improvement District No. 1 (the “District”) “is a Chapter 51 Water Control and Improvement District,” meaning that chapter 51 of the Water Code authorizes and governs the District. Request Letter at 1; *see* TEX. WATER CODE §§ 51.001–.875 (chapter 51). You tell us that the authorized representative of a corporate owner of land located in the District sought to register to vote in District elections. Request Letter at 1. You explain that the “landowner is a Texas limited liability company [that] owns irrigable farmland or ranch land within the boundaries of the [D]istrict and receives and uses irrigation water delivered by the [D]istrict, by and through the [D]istrict’s canal system.” *Id.* You ask “whether the representative of a limited liability company is eligible to vote in an election conducted by” the District. *Id.* at 2.

Section 51.221 expressly applies only to elections conducted by “Maverick County Water Control and Improvement District No. 1.” *See* TEX. WATER CODE § 51.221 (titled “Eligibility to Vote: Maverick County Water Control and Improvement District No. 1”). Subsection 51.221(b) provides:

A *person* is eligible to vote in an election conducted by the district  
if the person:

(1) is 18 years of age or older;

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<sup>1</sup>*See* Letter from Honorable Jaime A. Iracheta, Maverick Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 2 (Mar. 7, 2022), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2022/pdf/RQ0448KP.pdf> (“Request Letter”).

(2) is a United States citizen;

(3) is an *individual* who holds title to or an interest in title to irrigable farmland or ranch land within the boundaries of the district; *and*

(4) receives and uses irrigation water delivered by the district by and through the district's canal system.

*Id.* § 51.221(b) (emphasis added).

Section 51.221 does not define the terms “person” or “individual.” Courts give words in a statute their common, ordinary meaning unless a statutory definition or context requires otherwise. *In re Tex. Educ. Agency*, 619 S.W.3d 679, 687 (Tex. 2021). The term “person” commonly means a “human being”—a natural person. WEBSTER’S THIRD NEW INT’L DICTIONARY 1686 (2002). In addition, the Water Code incorporates the Code Construction Act, which defines “person” to include artificial persons such as corporations or other legal entities, “unless the statute or context in which the word or phrase is used requires a different definition.” TEX. GOV’T CODE § 311.005(2); *see also* TEX. WATER CODE § 1.002(a) (incorporating the Code Construction Act).

But subsection 51.221(b) restricts the meaning of the term “person” by listing four eligibility requirements. TEX. WATER CODE § 51.221(b)(1)–(4). By using the word “and” to conjoin the requirements, subsection (b) limits voting eligibility to those persons who meet all four requirements. *See In re Brookshire Grocery Co.*, 250 S.W.3d 66, 69 (Tex. 2008) (determining that because two requirements were conjoined by the word “and,” both requirements applied).

An examination of these requirements reveals that subsection 51.221(b) authorizes only natural persons to vote in District elections. The age and citizenship requirements in subsections 51.221(b)(1) and (b)(2) concern only natural persons. *See* TEX. WATER CODE § 51.221(b)(1), (2); *see also* TEX. CONST. art. VI, §§ 1(a)(1) (disqualifying “persons under 18 years of age” from voting), 2(a) (requiring a voter to be “a citizen of the United States and . . . a resident of this State”); TEX. CIV. PRAC. & REM. CODE § 129.001 (“The age of majority in this state is 18 years.”).<sup>2</sup> The requirement in subsection 51.221(b)(3) concerns an “individual,” which usually (if not invariably) means a natural person.<sup>3</sup> Read as a contextual whole, section 51.221 makes a natural person but not a corporation or similar legal entity eligible to vote in District elections.

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<sup>2</sup>Subsections 55.221(b)(1) and (b)(2) correspond to similar voter qualification requirements in the Election Code. Water district elections “shall be generally conducted in accordance with the Election Code.” TEX. WATER CODE § 49.101. A qualified voter under the Election Code must not only be over the age of 18 and be a United States citizen, but also must reside in the State and must not have been judicially determined to be “totally mentally incapacitated,” among other requirements consistent with a natural person but not an artificial person. TEX. ELEC. CODE § 11.002.

<sup>3</sup>*See* WEBSTER’S THIRD NEW INT’L DICTIONARY 1152 (2002) (defining “individual” as a “single human being as contrasted with a social group or institution,” but also as “a single or particular being or thing”). The Water Code (continued...)

You inform us that the authorized representative who attempted to vote is eighteen years of age or older and a United States citizen. See Request Letter at 1. But subsection (b)(3) limits eligibility to “an individual who holds title to or an interest in title to irrigable farmland or ranch land within the boundaries of the district.” TEX. WATER CODE § 51.221(b)(3). “[T]he concept of ‘title’ speaks to ownership of rights in property.” *Hanson Bus. Park, L.P. v. First Nat’l Title Ins. Co.*, 209 S.W.3d 867, 870 (Tex. App.—Dallas 2006, pet. denied); see also TEX. CIV. PRAC. & REM. CODE § 16.021(4) (defining “title” to mean “a regular chain of transfers of real property from or under the sovereignty of the soil”). You tell us that the limited liability company owns the irrigated land, and you do not suggest the representative owns any separate interest.<sup>4</sup> See Request Letter at 1. Section 51.221 of the Water Code requires a person wishing to vote to register with the district. TEX. WATER CODE § 51.221(c). If the person registering does not provide information reflecting that the person “holds title to or an interest in title to irrigable farmland or ranch land within the boundaries of the district,” the registration does not establish the person’s eligibility to vote in an election of the District under section 51.221. See TEX. WATER CODE § 51.221(b)(3), (c).

By contrast, a different statute specifically authorizes voting by a registered representative in an election conducted by an irrigation district under chapter 58.<sup>5</sup> In a chapter 58 irrigation district election, “[n]otwithstanding the Election Code and any other law, a landowner or the landowner’s registered representative . . . is entitled to one vote” if the landowner satisfies the specified requirements. *Id.* § 58.222. To be eligible to vote, the “individual landowner, or the landowner’s registered representative” must be eighteen years of age or older, be a United States citizen, and meet other qualifications. *Id.* § 58.223. When “ownership of the land is vested in more than one individual or in a corporation, partnership, or other business entity, the vote must be made by a registered representative.” *Id.* § 58.225. Had the Legislature intended to provide similarly for voting by a representative at an election conducted by the District, it could have done

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repeatedly distinguishes between an “individual” and corporations or other legal entities, notably doing so in a voter eligibility statute concerning elections in chapter 58 irrigation districts. See TEX. WATER CODE § 58.225(b) (stating a voting requirement that applies when “ownership of the land is vested in more than one individual or in a corporation, partnership, or other business entity”); see also *id.* §§ 13.501(3) (distinguishing “individual” from “firm or corporation”), 29.002(1) (distinguishing “individual” from “association of individuals, partnership, corporation, receiver, trustee, guardian, executor, or a fiduciary or representative”), 59.004(3) (distinguishing “business entities” and “individuals”).

<sup>4</sup>Even the owner or owners of a limited liability company do not own an interest in specific property of the company. “Texas law recognizes that a limited liability company is a legal entity that is distinct from its members, and members do not have interests in the property of the company.” *RLI Ins. Co. v. Caliente Oil, Inc.*, 469 F. Supp. 3d 729, 739–40 (W.D. Tex. 2020); see also TEX. BUS. ORG. CODE § 101.106(a) (stating that an interest in a limited liability company is personal property), (b) (stating a member of a limited liability company “does not have an interest in any specific property of the company”); *Sherman v. Boston*, 486 S.W.3d 88, 94 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (holding that the sole member of a limited liability company did “not have an interest in any property of the company”). The purpose of incorporation “is to create a distinct legal entity, with legal rights, obligations, powers, and privileges different from those of the natural individuals who created it, who own it, or whom it employs.” *RLI Ins. Co.*, 469 F. Supp. 3d at 739–40 (quoting *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001)).

<sup>5</sup>A water control and improvement district created under a different chapter may convert into a district operating under chapter 58 provided it furnishes water for irrigation and does not furnish treated water or sewer services. See TEX. WATER CODE § 58.038. You do not suggest that the District has converted to an irrigation district under chapter 58.

so. But it did not. “When the Legislature includes a right or remedy in one part of a code but omits it in another,” courts presume the omission was intentional and enforce the difference. *PPG Indus., Inc. v. JMB/Houston Centers Partners Ltd. P’ship*, 146 S.W.3d 79, 84 (Tex. 2004). Accordingly, a court would likely conclude that section 51.221 of the Water Code does not authorize the representative of a limited liability company to vote on behalf of the company in an election conducted by the District. To vote in such an election, a person must meet the eligibility requirements of section 51.221 in the person’s individual capacity. *See* TEX. WATER CODE § 51.221.

**S U M M A R Y**

Section 51.221 of the Water Code authorizes a person who meets certain qualifications to vote in an election conducted by the Maverick County Water Control & Improvement District No. 1. A court would likely conclude that section 51.221 of the Water Code does not authorize the representative of a limited liability company to vote on behalf of the company in an election conducted by that District. To vote in such an election, a person must meet the eligibility requirements of section 51.221 in the person's individual capacity.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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