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Frank Madla
Texas State Senate
District 19

1313 S.E. McEvers Dr.
San Antonio, Texas 78214-2850
210 527-9464
FAX (210) 922-8521
P.O. Box 12068
Austin, Texas 78711
(512) 461-0119
FAX (512) 463-1017
TDD 7-800-735-2969

January 3, 2001

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Honorable John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

JAN 29 2001
OPINION COMMITTEE

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

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cc: CKE
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Dear Attorney General Cornyn:

Please accept this letter as a request for opinion regarding the self appointment of elected officials to a Water District pursuant to Section 36.051 of the Texas Water Code.

Currently, Section 36.051(b) reads "[a] member of a governing body of another political subdivision is ineligible for appointment or election as a director. A director is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body or another political subdivision. *This subsection does not apply to any district with a population less than 50,000.*" (Emphasis added)

Additionally, Attorney General Opinion Letter's LO-93-70 and LO-94-020 state that "[t]he governing body of an entity that is authorized to make an appointment to the board of directors of the EAA may not appoint one of its own members to that position"; and "[t]he common-law principle that disqualifies all members of a public governing body with the appointing power from appointing themselves to a different position, applies to each governmental body that Acts 1993, 73d Leg., ch. 626, sec. 1.09(b), at 2359, requires to appoint a member for the board of directors of the Edwards Aquifer Authority;" respectively.

At issue is the question of whether a governmental body in a district with a population less than 50,000 may appoint themselves as members of a groundwater conservation district, and if so, does self appointment violate Attorney General Opinion Letter LO-93-70 and LO-94-020.

Feel free to contact me if you need more information and thank you for attention to this matter.

Sincerely,

Frank Madla

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