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OPINION COMMITTEE



Jim Solis - Chair
Yvonne Barton - Committee Clerk
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512/463-0794

COMMITTEE ON ECONOMIC DEVELOPMENT
TEXAS HOUSE OF REPRESENTATIVES

P.O. Box 2910
Austin, Texas 78768-2910
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January 3, 2002

RQ-0496-JC

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2501

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

FILE # ML-42380-02
I.D. # 42380

Dear General Cornyn:

The 77th Legislature during its regular session passed a bill creating the Lake Granbury Water Improvement District, subject to a confirmation election to be held in May 2002 (Chapter 1477, Acts of the 77th Legislature, Regular Session, 2001). Section 8(a) of the bill names eight temporary directors. Section 10(a) requires the temporary directors to call, for the first Saturday in May 2002, an election to confirm the creation of the district and to elect the initial group of permanent directors.

The last names of three temporary directors were misspelled in the bill: "Susan Cummet" (Section 8(a)(3); the last name is correctly spelled "Cummer"), "Larry Kemp" (Section 8(a)(4); the last name is correctly spelled "Camp"), and "James L. Shultz" (Section 8(a)(7); the last name is correctly spelled "Schulze"). A fourth named temporary director, J. C. Wright (Section 8(a)(8)), was serving at the time of enactment and is serving at this time as director for a municipal utility district, for which he receives compensation and thus was at the time of enactment and remains ineligible under Section 40, Article XVI, Texas Constitution, to serve contemporaneously as a temporary director for the Lake Granbury Water Improvement District, for which he would also be compensated under Section 49.060, Water Code.

Section 8(c) of the bill provides:

If a temporary director fails to qualify for office, the temporary directors who have qualified shall appoint a person to fill the vacancy. If at any time there are fewer than five qualified temporary directors, the Texas Natural Resource Conservation Commission shall appoint the necessary number of persons to fill all vacancies on the board.

Jim Keffer - Vice-chair
Members: Ron Clark, Joe Deshotel, Mark Homer, Vilma Luna
Ruth Jones McClendon, Gene Seaman, Ken Yarbrough

The Honorable John Cornyn
December 19, 2001
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In this context, I request your opinion on the following questions:

(1) What effect does the misspelling in the statute of a temporary director's name have on that director's statutory appointment and eligibility to serve?

(2) If the incorrect spelling of a temporary director's name invalidates the statutory appointment:

(A) Is a statutorily appointed temporary director who is ineligible to serve under Section 40, Article XVI, Texas Constitution, and known to be ineligible, nonetheless a de facto officer until that director is replaced and thus able to form part of a board quorum and vote with the quorum to fill a vacancy created by the misspellings? or

(B) Must the Texas Natural Resource Conservation Commission appoint persons to fill all four questionable positions?

Thank you for your assistance with this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Jim Solis", written over a large, circular, light-colored stamp or mark.

Jim Solis
Chairman