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OPEN RECORDS DIVISION

LESLIE BREEDING

Roberts County Attorney  
Roberts County Courthouse

**RQ-0043-6A**

April 14, 2003

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED #71603901984401689266

The Honorable Greg Abbott  
Opinions Committee  
PO Box 12548  
Austin, TX 78711-2548

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APR 21 2003

OPINION COMMITTEE

RE: Request for Attorney General Opinion regarding a county commissioners court's authority to consider competing petitions for a fresh water supply district and related matters.

FILE # ML-43067-03

I.D. # 43067

Dear General Abbott,

Please consider this request for an Attorney General Opinion regarding a county commissioners court's authority in considering competing petitions for a fresh water supply district and related matters. First, a sequence of events will be outlined, and second, the related issues and law will be briefed.

A petition for the Roberts County Fresh Water Supply District No. 1 was filed with the Roberts County Commissioners Court on or about October 17, 2002, by landowners of the proposed district. On November 12, 2002, the Roberts County Commissioners Court conducted a public hearing pursuant to the requirements of Chapter 53 of the Water Code to accept public comment on the petition. Action on the Petition for the Roberts County Fresh Water Supply District No. 1 was left pending until a Takings Impact Assessment could be conducted regarding the petition. The Takings Impact Assessment was adopted by the Commissioners Court on January 13, 2003.

On January 23, 2002, a petition for the Roberts County Fresh Water Supply District was filed by landowners of the proposed district which would include the entire county. A public hearing was held on February 10, 2003, to accept public comment on the petition. Action on the Petition for the Roberts County Fresh Water Supply District was left pending until a Takings Impact Assessment could be conducted regarding the petition. The Takings Impact Assessment was adopted by the Commissioners Court on March 10, 2003. During the Public Hearing section of the March Court Meeting, and the public comment section of the April Court Meeting, attorneys for Petitioners for the Roberts County Fresh Water Supply District No. 1 promised the Court that the Petitioners would agree to give up the powers of annexation without the landowner's approval and the power to assess ad valorem taxes. Currently, the Roberts County Commissioners Court has tabled action on both matters pursuant to this request.

The first issue for consideration is the priority, if any, required by law when a county commissioners court is presented with two petitions for a fresh water supply district, one which includes land in the entire county and another which includes only a portion of land in the county. Should the commissioners court consider the petitions in the order that they were filed or does the county wide petition have priority? If the commissioners court grants approval to one petition, is the other petition automatically excluded?

Second, is there any discretion on the part of a commissioners court to grant or deny a fresh water supply district based on reasons other than the sufficiency of the petition on its face. Under the provisions of Chapter 53, Water Code, it is the duty of the commissioners court to conduct the hearing and consider testimony in determining the sufficiency of a petition filed to create a fresh water supply district. The commissioners court shall have jurisdiction to determine all issues pertaining to the sufficiency of the petition and shall allow all interested persons to appear before it and offer testimony relative to the sufficiency of the petition.<sup>1</sup> The commissioners court may adjourn the hearing from day to day as necessary to complete the hearing.<sup>2</sup> The commissioners court may make all orders necessary to determine the matters before it.<sup>3</sup>

The requisites to the petition include proper signatures of 50 or a majority of the electors of the proposed district who own land in the proposed district.<sup>4</sup> Additionally, the petition must state: the boundaries of the proposed district; the feasibility of the proposed district; and the proposed name for the district.<sup>5</sup> The notice provisions are required to "include a statement that any person is entitled to appear at the hearing, challenge the form and allegations of the petition, and contest the proposition that the projects to be undertaken by the proposed district would benefit the land inside its boundaries."<sup>6</sup>

However, there is no clear provision in Chapter 53 which grants a commissioners court the discretion to accept or deny a petition for reasons other than the sufficiency of a petition on its face. Previously, a commissioners court had the authority and discretion to deny a petition for a fresh water supply district based upon findings other than the sufficiency of a petition pursuant to the authority of the former TEXAS WATER CODE §53.020 concerning findings and ordering elections. The statute was repealed in 1995 and was then replaced with the new §53.020 in 1997.<sup>7</sup> However, if the commissioners court has no discretion, the provisions requiring notice and challenges by evidence at the hearing would appear to be of no effect. Roberts County requests your opinion concerning its authority to accept or deny one or both of the petitions for the creation of a fresh water supply district upon evidence not shown upon the face of the petition.

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<sup>1</sup> TEXAS WATER CODE §53.019(a)

<sup>2</sup> TEXAS WATER CODE §53.019(b)

<sup>3</sup> TEXAS WATER CODE §53.019(c)

<sup>4</sup> TEXAS WATER CODE §53.014(1).

<sup>5</sup> TEXAS WATER CODE §53.014(2)

<sup>6</sup> TEXAS WATER CODE §53.017(a)

<sup>7</sup> 74<sup>th</sup> Leg., R.S., ch. 715, §42, 1995 Tex. Gen. Laws 3755, 3803; 75<sup>th</sup> Leg., R.S., ch. 1070, §26, 1997 Tex. Gen. Laws 4074, 4081.

The third issue for consideration is the authority of a commissioners court to exclude land from a proposed fresh water supply district upon request or petition from a property owner included in the proposed fresh water supply district. Certain property owners have requested that the commissioners court exclude their property from one of the proposed districts. Chapter 53 of the Texas Water Code does not grant a commissioners court the authority to exclude property from a fresh water supply district. Chapter 49 of the Texas Water Code does grant this authority to newly created water districts. Pursuant to §49.303 of the Texas Water Does, before a district orders an election for the authorization of bonds payable in whole or in part from taxes, the board may, on its own motion, call a hearing on the question of the exclusion of land from the district. Pursuant to subsection (b) of that same section, the board must call a hearing on the exclusion of land on written petition from a landowner.<sup>8</sup> Further, the district may add or exclude land before the confirmation election.<sup>9</sup>

Chapter 49 defines "district" as any district or authority created under Section 59, Article XVI of the Texas Constitution which is the authority for fresh water supply district created under Chapter 53, TEXAS WATER CODE. The statute provides for an exclusion from a fresh water supply district. Therefore, it seems a request for an exclusion filed with a county commissioners court would have no legal effect and the commissioners court should not take any action on these requests.

Finally, the petitioners for creation of the proposed district have submitted names of proposed temporary directors. Some, if not all, of these persons may be disqualified if the provisions of §49.052, TEXAS WATER CODE, apply to these positions. Specifically, the proposed temporary directors may have a contractual relationship with the proposed District to supply water to the district for resale, or may use the District's facilities for the sale of their water. Do the provisions of §49.052, Texas Water Code, apply to persons appointed to serve as temporary supervisors of the district under §53.020, TEXAS WATER CODE?

Based upon my review, these issues have not been determined by prior court decisions or Opinions of the Attorney General. Should you have any questions, please contact me. Thank you for your time and attention to this request.

Sincerely,



Leslie Breeding

Robert County Attorney

cc: Roberts County Commissioners Court

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<sup>8</sup> TEXAS WATER CODE §49.303(b)

<sup>9</sup> TEXAS WATER CODE §49.315