

# TEXAS HOUSE OF REPRESENTATIVES

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FRANK J. CORTE JR.

RECEIVED

August 21, 2004

RQ-0277-GA

AUG 24 2004

OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-43894-04

I.D. # 043894

Dear General Abbott:

As chairman of the House Committee on Defense Affairs and State-Federal Relations, I respectfully request your opinion on the following issue:

Does Section 49.103(a), Texas Water Code, which requires water district directors to be elected to four-year terms, apply to current directors of the Bexar Metropolitan Water District who were elected to the board of directors after the effective date of the 1997 amendments to Section 49.103?

Because two members of the current board were elected in 2000, their terms are due to expire this year if they are serving four-year terms. However, the district is treating the board members as if they were elected to six-year terms in 2000. Accordingly, because your opinion will potentially impact which districts will hold elections this November, this opinion is of a critical time sensitive nature. Your opinion could result in an additional two district directors being up for election this November. Because the filing deadline for the November 2, 2004, election is almost upon us (under Section 155.005, Texas Election Code, September 1 is the applicable candidate filing deadline applicable to November 2004 water district elections), and the administrative duties that are required by the local elections administrator to hold the elections in those districts must begin to be carried out immediately after the filing deadline, I plead with you to expedite your opinion and issue it before the September 1 deadline.



DISTRICT 122

COMMITTEES: CHAIR-DEFENSE AFFAIRS AND STATE-FEDERAL RELATIONS • JUDICIAL AFFAIRS

E-Mail: frank.corte@house.state.tx.us

I understand the difficulty of expediting this request, however, tens of thousands of citizens in my district are directly affected by this outcome and if an opinion is not rendered in time to hold the necessary elections, these citizens could effectively have their voting rights disenfranchised by not being able to vote in an election that should be held.

Bexar Metropolitan Water District was created by the Legislature in 1945 as a political subdivision designed to provide water service to Bexar County residents within its boundaries.<sup>1</sup> Prior to 1996, Bexar Met board members served terms of 6 years each as provided by that act and were elected at large. In 1996, in *Rolando Rios v. Bexar Metropolitan Water District*, the United States District Court for the Western District of Texas ordered the district to elect its directors from single-member districts. Appropriate districts were drawn and subsequent elections were held from single-member districts in 1998, 2000, and, after a 2002 delay relating to the litigation, again in 2003. Elections for certain single-member districts are scheduled to be held this November.

In 1995, in an attempt to bring special law districts into more uniformity, the Legislature amended Section 49.103(a), Texas Water Code,<sup>2</sup> to require that applicable water district directors be elected to four-year terms of office. In 1997, Section 49.103(e)<sup>3</sup> was amended to state that "the provisions of Subsections (a) and (b) take precedence over all prior statutory enactments." As a result, it appears that four-year terms would have become applicable to Bexar Metropolitan Water District.

In the continuing jurisdiction of the Rios case by the federal district court, several rulings have resulted in changes or clarifications to the terms of Bexar Met directors and a ruling on July 22, 2004, amended the Court's previous order to clarify that "the terms of directors of the Bexar Metropolitan Water District shall be governed by applicable state law, as currently reflected in section 49.103(a) of the Texas Water Code..." Furthermore, the ruling directs the District to seek an Attorney General's opinion as to whether section 49.103(a) should apply only to future directors, or to current directors as well.

I am aware that the Bexar Met board attempted to seek the opinion of the Attorney General on this matter as directed by the district court, but that the board is not authorized by statute to make a formal opinion request. Accordingly, as an authorized requestor, I am making this request for your opinion on this matter.

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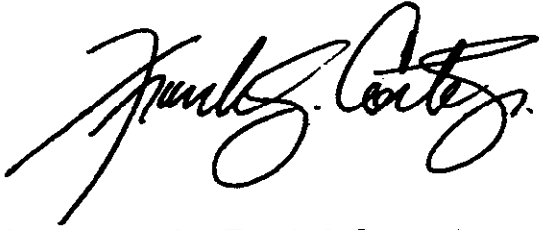
<sup>1</sup> Ch. 306, Acts of the 49th Legislature, Regular Session, 1949.

<sup>2</sup> Sec. 2, Ch. 715, (SB 626), Acts of the 74th Legislature, Regular Session, ch.715, eff. Sep. 1, 1995.

<sup>3</sup> Sec. 4, Ch. 1070 (SB 1865), Acts of the 75th Legislature, Regular Session, 1997, eff. Sept.1, 1997.

As I stated above, due to the potential impact of your decision on the voting rights of thousands of citizens of Bexar County, I respectfully request an expedited response to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Corte, Jr.", written in a cursive style.

Representative Frank J. Corte, Jr.  
Chair, House Committee on Defense Affairs  
and State-Federal Relations

Enclosures



# Frank Madla

Texas State Senate  
District 19

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August 25, 2004

RQ-0277-GA

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AUG 30 2004

OPINION COMMITTEE

The Honorable Greg Abbott  
Attorney General of Texas  
P. O. Box 12548  
Austin, TX 78711-2548

FILE # MC-43894-04

I.D. # 043907

**RE: Request for Attorney General's opinion regarding whether the directors of a water district, created pursuant to Section 59 of Article 16 of the Texas Constitution, elected to six year terms as provided in prior law and a 1996 federal court single-member districting order would be required to have their terms shortened due to the federal court's July 2004 amendment of its order to henceforth provide for four year terms as required by state law.**

Dear General Abbott:

On behalf of the Bexar Metropolitan Water District (BexarMet), I respectfully request an opinion regarding the following matter:

BexarMet was created pursuant to Section 59 of Article 16 of the Texas Constitution in 1945 by the 49th Legislature, Vernon's Annotated Revised Civil Statutes, Article 8280-126, with an initial five member Board of Directors. In 1953, pursuant to an amendment to Article 8280-126, the directors were thereafter elected to six year terms.

In 1996, pursuant to Orders in Case No. SA-96-CA-0335 OG, *Rolando Rios v. Bexar Metropolitan Water District*, in the United States District Court for the Western District of Texas, San Antonio Division (Rios Case) the Court ordered that BexarMet's Directors were thereafter to be elected from single member districts. The Court's orders also provided that directors elected thereafter were to be elected to six year terms, which was in accordance with existing law and which has been done through the present date.

In 1997, the Legislature changed the applicable terms of office for certain political entities like BexarMet to four year terms (§49.49.103(e), Water Code).

Recently, the Federal District Court held a status conference on another issue related to the Rios Case and sua sponte raised the issue of why BexarMet's Directors continued to be elected to six year terms rather than four year terms as now provided by §49.49.103(e), Water Code. Without objection from the parties, the Court entered its

#### COMMITTEES

Intergovernmental Relations, Chairman • Infrastructure Development & Security • Natural Resources • State Affairs



Clarifying Order amending its 1996 Orders to provide that the BexarMet Directors' terms should be governed by applicable state law as currently reflected by §49.103(a), Water Code, to-wit: Four year terms, and that change in election procedures is now on submission to the Department of Justice for Preclearance.


It is anticipated the Justice Department will approve the submission. Thus, the November 2004 election will provide that BexarMet Directors' terms will be for four year terms and at that time, no sitting (current or newly elected) Director will have more than four years left to serve in their current term. The District Court inquired, however, whether current Directors who had been elected to six year terms should have their present six year terms reduced to a four year term to be in compliance with the 1997 statute.

Based on these facts, the District Court has ordered that BexarMet seek an official attorney general opinion as to this specific issue. Therefore, on their behalf, I respectfully submit the following question for your opinion:

**Are the directors of a water district, created pursuant to Section 59 of Article 16 of the Texas Constitution, who are elected to six year terms as provided in prior law and a Federal Court Single-Member Districting 1996 Order required to have their terms shortened due to the Federal Court's July 2004 amendment of its order to henceforth provide for four year terms as required by state law?**

Thank you for your consideration of this request. Your prompt attention to this issue would be greatly appreciated. Please do not hesitate to contact me or Jason Anderson on my staff should you have any questions or require additional information.

Yours truly,

  
Frank Madla

Fm/ja



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AUG 30 2004  
OPINION COMMITTEE

## COMMITTEE ON NATURAL RESOURCES

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General Counsel

**SENT VIA FACSIMILE AND CERTIFIED MAIL**

August 27, 2004

RQ-0277-GA

The Honorable Greg Abbott  
Attorney General of Texas  
209 West 14th Street  
Austin, Texas 78701

FILE # ML-43894-04  
I.D. # 043903

Dear Attorney General Abbott:

I respectfully request your opinion on the following issue:

Does Section 49.103(a), Texas Water Code, which requires water district directors to be elected to four-year terms, apply to current directors of the Bexar Metropolitan Water District (Bexar Met) who were elected to the board of directors after the effective date of the 1997 amendments to Section 49.103?

I have been working with Representative Frank Corte on this issue and I know that you have already received a similar opinion request from him. Like Representative Corte, I am concerned about the potential impact on voters within Bexar Met's jurisdiction and ask that you expedite the issuance of this opinion by September 1, 2004.

I realize the difficulty of meeting this request; however, because two members of the current board were elected in 2000, their terms are due to expire this year, if they are serving four-year terms. While the district is treating the board members as if they were elected to six-year terms in 2000, your opinion could result in the additional two district directors being up for election this November. The filing deadline for the November 2, 2004 election is September 1, thereby creating the urgency of this request.

Bexar Metropolitan Water District was created by the Legislature in 1945 as a political subdivision designed to provide water service to Bexar County residents within its boundaries.<sup>1</sup> Prior to 1996, Bexar Met board members served terms of 6 years each as provided by the 1945 Act and were elected at large. In 1996, in *Rolando Rios v. Bexar Metropolitan Water District*, the United States District Court for the Western District of Texas ordered the district to elect its directors from single-member districts. Appropriate districts were drawn and subsequent elections were held from single-member districts in 1998, 2000, and, after a 2002 delay relating to the litigation, again in 2003. Elections for certain single-member districts are scheduled to be held this November.

In 1995, in an attempt to make special law districts more uniform, the Legislature amended Section 49.103(a), Texas Water Code,<sup>2</sup> to require that applicable water district directors be elected to four-year terms of office. In 1997, Section 49.103(e)<sup>3</sup> was amended to state that "the provisions of Subsections (a) and (b) take precedence over all prior statutory enactments." As a result, it appears that four-year terms became applicable to Bexar Met.

Several federal district court rulings have resulted in changes or clarifications to the terms of Bexar Met directors and a ruling on July 22, 2004, amended the Court's previous order to clarify that "the terms of directors of the Bexar Metropolitan Water District shall be governed by applicable state law, as currently reflected in section 49.103(a) of the Texas Water Code..." Furthermore, the ruling directs the District to seek an attorney general's opinion as to whether section 49.103(a) should apply only to future directors, or to current directors as well.

I have been informed that the Bexar Met board attempted to seek the opinion of the Attorney General on this matter, but that the board is not authorized by statute to make a formal opinion request. Therefore, I am making this request for your opinion on this matter.

If you have any questions, do not hesitate to contact me.

Sincerely,



Robert R. Puente

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<sup>1</sup> Ch. 306, Acts of the 49th Legislature, Regular Session, 1945.

<sup>2</sup> Sec. 2, Ch. 715, (SB 626), Acts of the 74th Legislature, Regular Session, ch.715, eff. Sep. 1, 1995.

<sup>3</sup> Sec. 4, Ch. 1070 (SB 1865), Acts of the 75th Legislature, Regular Session, 1997, eff. Sept. 1, 1997.