



The State of Texas House of Representatives

JOHN KUEMPEL DISTRICT 44 • GUADALUPE & GONZALES COUNTIES

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By Opinion Committee at 3:21 pm, Oct 09, 2024

RQ-0565-KP

October 8, 2024

Honorable Ken Paxton
Attorney General for the State of Texas
PO Box 12548
Austin, TX 78711-2548

Re: Opinion Request – Whether the Scope of a Person’s Commercial Use of Their Property Would Render the Individual a “Developer” Under the Texas Water Code, Thereby Disqualifying Them From Serving on a Special Utility District Board of Directors

Dear General Paxton:

I am writing to respectfully request an Attorney General Opinion regarding your interpretation of Texas Water Code § 49.052’s definition of a “developer” as it applies to a person’s eligibility to serve on the board of directors of a special utility district in Texas.

Texas Water Code § 49.052(a)(3) provides:

A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county and which, if located within the corporate area of a city or cities, includes within its boundaries less than 75 percent of the incorporated area of the city or cities, if that person:

...

(3) is a developer of property in the district;

In turn, Texas Water Code § 49.052(d) defines a “developer of property in the district” as follows:

As used in this section, “developer of property in the district” means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.



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Specifically, I seek your opinion on whether, under the following circumstances, a person would meet the statutory definition of a “developer” under Texas Water Code § 49.052(d), thereby disqualifying the person from serving on the board of directors of a special utility district:

The person owns real property within a special utility district’s boundary and has constructed a commercial development consisting of multiple large buildings intended for commercial purposes, such as retail outlets, office spaces, services centers, or movie theaters, on said property. The property owner will lease commercial space on the property, and the activities proposed on the property may require parking facilities that are open to the public. In such a scenario, the proposed commercial activities on the property would necessitate both county permitting applicable to new developments and the completion of a non-standard service agreement with the special utility district due to the need for multiple water meters and an engineering feasibility study to provide water service to the development.

The special utility district has historically treated a person such as the above-described commercial development owner as a “developer” and has adopted the Texas Water Code Section 13.2502(e)(1) definition of “developer” as part of its legally binding rules and regulations.¹ Section 13.2502(e)(1), which is specifically made applicable to special utility districts, provides that a “Developer” means a person who subdivides land *or requests more than two water or sewer service connections on a single contiguous tract of land.*” (emphasis added).

Given these circumstances, including the apparently inconsistent definitions of “developer” in Chapters 13 and 49 of the Texas Water Code, I respectfully request your opinion on whether owning a commercial development as described above within a special utility district would render the person a “developer” under Texas Water Code § 49.052(d), thereby disqualifying the commercial property owner from serving on a special utility district board of directors pursuant to Texas Water Code Section 49.052(a)(3).

Thank you for your attention to this matter. I look forward to your opinion on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kuempel".

John Kuempel
State Representative, District 44

¹ See Texas Water Code Section 65.206 (providing that “[a]fter the required publication, rules adopted by the district under Section 65.205 of this code shall be recognized by the courts as if they were penal ordinances of a city.”)