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Honorable Ken Paxton
Texas Attorney General
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Re: Request for Attorney General Opinion on the Detachment Process for a School District under Texas Education Code Sections 13.101 through 13.105

Dear General Paxton:

Pursuant to Texas Government Code Section 402.042, the Tarrant County Criminal District Attorney requests an opinion seeking clarification on the procedural requirements for a school district engaging in the detachment process authorized in Texas Education Code Subchapter C, consisting of Sections 13.101 through 13.105. The specific questions presented are as follows:

- 1) Under Education Code Sections 13.101 through 13.105, may a school district board of trustees for a single school district pass a resolution detaching a portion of its territory and creating a new school district without an election?
- 2) If a new school district is created through the detachment process, do Education Code Sections 13.105(c) and 13.004(a) require a commissioners court to equitably allocate personal property between the previously existing and newly created school districts?

I. Background

It has been widely reported in Tarrant County area media the Keller Independent School District's Board of Trustees ("Keller ISD") is considering detaching a portion of its territory and forming a new school district through the passage of a resolution. *See* Jacob Sanchez, Fort Worth mayor, Texas legislator call for election on Keller ISD split. Here's why, Fort Worth Report (Jan. 17, 2025), <https://fortworthreport.org/2025/01/17/fort-worth-mayor-texas-legislator-call-for-election-on-keller-isd-split-heres-why/>. However, there is disagreement among the public and elected officials as to whether such a resolution would trigger an election on the question of detachment or if a valid resolution by itself without an election is sufficient for the Tarrant County Commissioners Court to order the creation of a new school district. *See* Matthew Sgroi, Report details Keller ISD's financial woes. Residents question if district split would solve them, KERA

News (Jan. 31, 2025), <https://www.keranews.org/education/2025-01-31/report-details-keller-isds-financial-woes-residents-question-if-district-split-would-solve-them>.

Regardless of the method by which it occurs, detachment requires a commissioners court to play a role in dividing the indebtedness between the existing and new school districts. Tex. Educ. Code § 13.105(c). What is less clear is if a commissioners court must also divide personal property between these districts as well. Tex. Educ. Code § 13.004(a).

Because the issue of detachment is one which the Tarrant County Commissioners Court may soon be confronted with, resolution of these questions through an Attorney General opinion would provide much needed guidance in ensuring Tarrant County's actions are in compliance with Texas law.

II. Analysis of Arguments Under Texas Education Code Sections 13.101 through 13.105 on Whether an Election is Necessary for Detachment

The process of detachment splits off a portion of an existing school district to establish a new school district. Tex. Educ. Code § 13.101(a). In reviewing the statutes controlling detachment, there are three proposed methods by which the process may occur: 1) a petition and election; 2) passage of a resolution by a school district board of trustees which triggers an election; or 3) passage of a resolution by a school district board of trustees which results in the creation of the new district. The second and third processes cannot co-exist. The resolution must either trigger an election or complete the detachment process without an election. Although Subchapter C of Election Code Chapter 13 gives significant detail as to what the petition and election process encompasses, the statutes lack specificity as to the effect a board of trustee's resolution has on detachment.

Any detachment must be "initiated by resolution of the board of trustees of each district from which territory is to be detached or by a petition presented to the commissioners court." Tex. Educ. Code § 13.103. If the detachment is by a petition, once a commissioners court receives a petition, it must hold a hearing to determine if the petition meets the requirements of providing an appropriate legal description of the new district, be signed by the requisite number of registered voters, and is addressed to the appropriate commissioners court or commissioners courts (if the proposed new district spans more than one county). Tex. Educ. Code §§ 13.103-.104(a). This is clear as Education Code Section 13.103 states "A petition under this subchapter must" contain the previously described requirements. Tex. Educ. Code § 13.103. Similarly, Education Code Section 13.104(a) requires a hearing no later than thirty days "after the commissioners court receives a petition" on the issue of "the validity of the petition" at which the commissioners court will determine if "the petition is valid[.]" Tex. Educ. Code § 13.104(a).

If the requirements of Education Code Section 13.103 are met and the petition is determined to be valid, the school district board of trustees from which territory may be detached

must hold an election on the issue. Tex. Educ. Code § 13.104(a). If the election results in a majority of voters in the proposed detached area and in the remaining territory support the proposition, the results are reported to the commissioners court, which declares the results of the election and enters an order creating the new school district. Tex. Educ. Code §§ 13.104(d)-105(a). Put simply, the process of detachment through an election is well defined and straightforward. There is no doubt as to the required contents of a petition, the responsibilities of the commissioners court upon receipt of a petition, and the effects of a valid petition.

In contrast, the word “resolution” is used only once in Education Code Subchapter C. As previously noted, Education Code Section 13.103 allows initiation of the detachment process “by resolution of the board of trustees of each district from which territory is to be detached[.]” Tex. Educ. Code § 13.103. No specific requirements of what the resolution must contain or its effect are provided. It can be reasonably inferred a resolution initiating the detachment process must be approved by a majority of the board of trustees. *See* Tex. Educ. Code § 13.008 (“Any change in the boundaries of a school district is not effective unless approved by a majority of the board of trustees of the district if the board's approval is required under this chapter.”). Further, a resolution would likely need to propose a new district which meets minimum area and attendance requirements, while not reducing the existing district below the same. Tex. Educ. Code § 13.102 (new district and existing district must each be at least nine square miles or no fewer than 8,000 students in average daily attendance). Beyond these two inferences, Education Code Chapter 13 and more specifically Subchapter C is silent as to what a resolution initiating detachment must contain and its effect.

There are two possibilities as to the effect of a resolution. One school of thought is the passage of a resolution by a board of trustees triggers the election process contemplated by Education Code Section 13.104. Supporters of this argument assert a resolution initiating detachment is treated in the same manner as a petition in that a commissioners court cannot act on the resolution alone, but must determine the validity of the resolution which then triggers the ministerial responsibility of a board of trustees to order an election. *See* Tex. Educ. Code § 13.104(a). Under this theory, it is an election and an election alone, whether initiated by a petition or resolution, which authorizes the creation of a new school district by detachment. Proponents argue such an interpretation upholds the legislative intent of allowing the electorate to directly decide the question of detachment as expressed in Education Code Section 13.104. *See* Tex. Gov't Code §§ 312.005-.006(a) (in interpreting statutes, courts are to “ascertain legislative intent,” consider “the evil, and the remedy,” and liberally construe statutes “to achieve their purpose and to promote justice”). However, this line of reasoning cannot account for the lack of the term “resolution” and exclusive use of “petition” in Education Code Section 13.104. If proponents of this theory are correct, it would require reading the word “resolution” into Education Code Section 13.104 or understanding the word “petition” to interchangeably mean “resolution,” a method of statutory interpretation generally disfavored by Texas courts. *See Presidio Indep. Sch. Dist. v. Scott*, 309 S.W.3d 927, 930 (Tex. 2010) (“In construing statutes, we ascertain and give effect to the Legislature's intent as expressed by the statute's language. Where text is clear, it is

determinative of that intent and we give meaning to the language consistent with other provisions in the statute.”) (internal citations omitted).

An alternative interpretation posits a resolution passed by a board of trustees moves the detachment process straight to the stage of the commissioners court ordering the creation of a new school district. Tex. Educ. Code § 13.105(a). In this reading of Election Code Subchapter C, an election is not required and the detachment process is successfully accomplished solely through the approval of a resolution. This argument relies on the plain wording of Education Code sections 13.103 through 13.105, where “resolution” is not mentioned in conjunction with an election on the issue. Opponents of this theory argue the language in Education Code Section 13.103 stating the detachment process “is initiated by resolution of the board of trustees of each district from which territory is to be detached” contemplates the resolution process can only be employed when multiple school districts are detaching portions of their district. If a school district acting on its own were able to pass a resolution and successfully complete the detachment process, opponents assert this would fail to give effectual meaning to the usage of the term “each district,” which necessarily means multiple school districts must be involved. The same textualist argument previously articulated by the opposing camp equally applies here, as the word “each” is generally used to refer to every individual item in a group of two or more things. *See* The America Heritage Dictionary 576 (3rd Ed. 1992) (defining “each” as “Being one of two or more considered individually; every”); *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (“When construing a statute, our primary objective is to ascertain and give effect to the Legislature’s intent. To discern that intent, we begin with the statute’s words. If a statute uses a term with a particular meaning or assigns a particular meaning to a term, we are bound by the statutory usage.”) (internal citations omitted).

Since its enactment in 1995, no Texas courts have issued opinions interpreting Education Code Sections 13.101 through 13.105 in a manner which would be determinative of this issue. Because of the grammatically ambiguous wording found in Education Code Subchapter C and the lack of precedent, an opinion of the Attorney General’s Office is needed to provide guidance and resolution.

III. Role of Commissioners Court in Dividing Personal Property of School Districts Following Detachment

Regardless of the opinion on the preceding question, the commissioners court has a duty under Education Code Sections 13.004 and 13.105(c) to equitably allocate indebtedness among the original and newly created districts. However, in addition to requiring the commissioners court to “equitably allocate the indebtedness among the districts involved,” Education Code Section 13.004(a) contains an additional requirement that “If territory from one district is annexed to another or if a district is abolished, the commissioners court shall also equitably allocate among the receiving districts a portion of the personal property of the annexed district[.]” Tex. Educ. Code § 13.004(a). In the case of detachment under Education Code Subchapter C, the transfer of territory

from an existing district to a newly created district is never explicitly referred to as an act of annexation. But in the process of detachment described in Education Code Section 13.051, “territory may be detached from a school district and annexed to another school district that is contiguous to the detached territory.” Tex. Educ. Code § 13.051(a). A similar requirement of splitting indebtedness is found in Education Code Section 13.051(i), but due to the use of the term “annexed” in this process, it seems clear the commissioners court would have the duty of splitting personal property between the districts pursuant to Education Code Section 13.004.

The above raises the issue of whether the commissioners court would be required to equitably allocate personal property between the two school districts following a successful detachment under Education Code Subchapter C or if the commissioners court’s only role in the division of assets and liabilities between the two school districts would be for indebtedness. Education Code Section 13.105 does not specifically mention the division of personal property between school districts and instead references only the division of indebtedness. If the commissioners court plays no role in the division of personal property between the districts, this raises a secondary question of whether personal property is divided between the districts at all. Tarrant County seeks the Attorney General’s opinion on this issue so it may act appropriately if detachment under Education Code Subchapter C occurs and requires the Tarrant County Commissioners Court to carry out its statutory duties.

IV. Conclusion

We respectfully request your opinion regarding application of Education Code Sections 13.101 through 13.105 in the circumstances described above.

Respectfully submitted,

Phil Sorrells
District Attorney
Tarrant County, Texas

A handwritten signature in cursive script, appearing to read "Phil Sorrells", is written over a horizontal line.

