



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2012

The Honorable R. Lowell Thompson
Navarro County Criminal District Attorney
300 West Third Avenue, Suite 203
Corsicana, Texas 75110

Opinion No. GA-0925

Re: Proper date for holding an election in Navarro
County to establish an emergency services district
(RQ-1010-GA)

Dear Mr. Thompson:

You ask about the proper date for holding an election in Navarro County for the purpose of establishing an emergency services district.¹

Under chapter 775 of the Health and Safety Code, “[a]n emergency services district may be organized as provided by Article III, Section 48-e, of the Texas Constitution . . . and by this chapter to protect life and health.” TEX. HEALTH & SAFETY CODE ANN. § 775.003 (West 2010). The creation of such a district requires the filing of a petition, a hearing before the commissioners court, approval of the petition by the commissioners court, and the scheduling of an election. *See id.* §§ 775.011 (petition for district located in one county); 775.013 (contents of petition); 775.016 (hearing); 775.017 (approval of petition) (West Supp. 2011); and 775.018 (election) (West Supp. 2011). You explain that the commissioners court is at present attempting to schedule an election, but you are concerned that Senate Bill 100, enacted by the Eighty-second Legislature, may be in conflict with Election Code provisions that establish legislatively mandated uniform election dates. *See* Act of May 29, 2011, 82d Leg., R.S., ch. 1318, § 4, 2011 Tex. Gen. Laws 3804, 3810.

Chapter 775 states that “[t]he election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.” TEX. HEALTH & SAFETY CODE ANN. § 775.018(e) (West Supp. 2011). Chapter 41 of the Election Code, as amended by Senate Bill 100, prescribes the following dates for elections:

- (a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

¹Letter from Honorable R. Lowell Thompson, Navarro Cnty. Criminal Dist. Att’y, to Honorable Greg Abbott, Tex. Att’y Gen. (Oct. 25, 2011), <http://www.texasattorneygeneral.gov/opin> (“Request Letter”).

- (1) the second Saturday in May in an odd-numbered year;
- (2) the second Saturday in May in an even-numbered year, *for an election held by a political subdivision other than a county*; or
- (3) the first Tuesday after the first Monday in November.

TEX. ELEC. CODE ANN. § 41.001(a) (West Supp. 2011) (emphasis added). Subsection (b) describes seven situations to which subsection (a) does not apply. *See id.* § 41.001(b). None of these situations are applicable to an election in which voters determine whether to create an emergency services district.² Subsection (a)(1) of section 41.001 does not apply because calendar year 2012 is not an “odd-numbered year.” Moreover, because an election to approve the creation of an emergency services district would be an election *held by a county*, subsection (a)(2) is also not applicable. *See* TEX. HEALTH & SAFETY CODE ANN. § 775.018(a)(1)–(2) (West Supp. 2011) (“On the granting of a petition, the commissioners court shall order an election to confirm the district’s creation . . .”). Consequently, the next available date for holding the election at issue here is “the first Tuesday after the first Monday in November” of 2012, i.e., November 6, 2012, provided, of course, that such date “allows sufficient time to comply with other requirements of law,” as required by subsection 775.018(e) of the Health and Safety Code.³ *Id.* § 775.018(e).

²You appear to be most concerned about subsection (b)(6), which declares that subsection (a) is not applicable to “an election held under a statute that expressly provides that the requirement of Subsection (a) does not apply to the election.” *See* TEX. ELEC. CODE ANN. § 41.001(b)(6) (West Supp. 2011). However, nothing in chapter 775 of the Health and Safety Code “expressly provides” that the requirement of subsection (a) of section 41.001 of the Election Code “does not apply to the election.”

³Although section 41.0052 of the Election Code permits certain governmental bodies to change the date of a general election, that provision specifically does *not* apply to counties. *See* § 41.0052(a).

S U M M A R Y

The next available date for holding an election to create an emergency services district in Navarro County is November 6, 2012, provided that such date "allows sufficient time to comply with other requirements of law," as required by subsection 775.018(e) of the Health and Safety Code.

Very truly yours,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

GREG ABBOTT
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