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ATTORNEY GENERAL OF TEXAS

January 21, 2020

The Honorable Rob Baiamonte
Goliad County Attorney
Post Office Box 24
Goliad, Texas 77963

Opinion No. KP-0286

Re: Procedure to repeal a special road tax
(RQ-0298-KP)

Dear Mr. Baiamonte:

You ask what procedures a county must follow to initiate an election to repeal a special road tax adopted under section 256.052 of the Transportation Code for the maintenance of county roads.¹ *See* TEX. TRANSP. CODE § 256.052; *see also* TEX. CONST. art. VIII, § 9(c) (authorizing the Legislature to provide for a special road tax). Specifically, you focus on the number of voter signatures required on a petition calling for an election to repeal the tax. *See* Request Letter at 1; Brief at 1.

Subsection 256.053(a) of the Transportation Code provides that the commissioners “may order and conduct an election to repeal” the special road tax “in the manner provided for an election to adopt the tax.” TEX. TRANSP. CODE § 256.053(a).² Thus, the procedure used by the commissioners court to order and conduct an election to adopt the tax also applies to an election to repeal. *See id.*; *see also* WEBSTER’S THIRD NEW INT’L DICTIONARY 1376 (2002) (defining “manner” as “the mode or method in which something is done or happens: a mode of procedure or way of acting”). To initiate an election to adopt the tax, section 256.052 provides that the commissioners court must receive a petition signed by “at least 200 registered voters of the county” requesting the election. TEX. TRANSP. CODE § 256.052(c)(1).³ Accordingly, the procedure for initiating an election to either adopt or repeal the tax is the same: the commissioners must receive a petition signed by at least 200 registered voters of the county requesting the election. *See id.* §§ 256.052, .053; *see also* *Black v. Am. Bankers Ins. Co.*, 478 S.W.2d 434, 437 (Tex. 1972) (“It is a cardinal rule of statutory construction that all sections, words and phrases of an entire act must

¹*See* Letter and Brief from Honorable Rob Baiamonte, Goliad Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 24, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter” & “Brief”).

²The substance of section 256.053(a) of the Transportation Code was formerly codified as article 6702-1, section 4.102(c) of the Revised Civil Statutes. As part of a nonsubstantive recodification, those provisions were recodified in the Transportation Code. *See* Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 1, sec. 256.053, 1995 Tex. Gen. Laws 1025, 1184.

³A petition requesting an election to approve the tax for a political subdivision or other specified portion of the county, rather than the entire county, must be signed by 50 registered voters from the political subdivision or defined district. TEX. TRANSP. CODE § 256.052(c)(2).

be considered together; every provision should be construed with every other portion to produce a harmonious whole . . .”).

However, subsection 256.053(c) contains an additional requirement for calling an election to repeal the tax:

The commissioners court *may* grant a petition calling for an election to repeal the tax only if satisfactory proof is presented to the court that:

- (1) there is great dissatisfaction with the tax; and
- (2) it is probable that a majority of the residents of the county . . . who are qualified to vote for the tax would vote for repeal of the tax.

TEX. TRANSP. CODE § 256.053(c) (emphasis added). Section 256.053 therefore does not require the commissioners court to call for an election to repeal the tax upon receipt of a petition with 200 signatures. *See id.* Rather, the commissioners court may grant the petition only if it receives “satisfactory proof” of both great dissatisfaction with the tax and the probable success of the election. *Id.* This threshold contrasts with section 256.052, which provides that—for a petition seeking an election to adopt the tax—the commissioners court must grant a petition signed by 200 registered voters. *Compare id.* § 256.052(c) (providing that commissioners court “shall” order an election to adopt the tax if it receives valid petition), *with* § 256.053(c) (providing that commissioners “may” grant valid petition to repeal the tax “only” if it receives “satisfactory proof”); *see also* TEX. GOV’T CODE § 311.016(1), (2) (providing that the Legislature’s use of the word “may” generally creates discretionary authority while “shall” imposes a duty). Thus, while the commissioners court must grant an adoption petition containing the requisite signatures, section 256.053 affords the commissioners court some discretion in determining whether to call an election to repeal the tax depending on whether it receives satisfactory proof. *See* TEX. TRANSP. CODE §§ 256.052, .053.

You next ask what evidence the commissioners court must receive to meet the “satisfactory proof” requirement; specifically, you suggest that a petition signed by more than 50% of the registered voters of the county constitutes such evidence. Request Letter at 1; Brief at 1. Section 256.053 does not require that the petition contain more than 200 signatures. TEX. TRANSP. CODE § 256.053; *Old Am. Cty. Mut. Fire Ins. Co. v. Sanchez*, 149 S.W.3d 111, 115 (Tex. 2004) (“[B]ecause we presume that every word of a statute has been included or excluded for a reason, we will not insert requirements that are not provided by law.”). Rather, while a majority of registered voters could constitute satisfactory proof, the standard could be met by other means, including testimony or other forms of public support. *See* TEX. TRANSP. CODE § 256.053. Overall, what constitutes satisfactory proof of great dissatisfaction with the tax and the election’s likely success is a fact question for the commissioners court to determine in the first instance, subject to judicial review. *See* Tex. Att’y Gen. Op. Nos. GA-0560 (2007) at 4–5, JC-0506 (2002) at 6; *see also* *Wooten v. Crosby Cty.*, 219 S.W.2d 553, 557 (Tex. App.—Amarillo 1949, writ ref’d).

S U M M A R Y

To initiate an election to repeal a county road tax adopted under section 256.052 of the Transportation Code, a county commissioners court must receive a petition calling for the election signed by 200 registered voters of the county. However, under section 256.053, the commissioners court may grant the petition only if satisfactory proof is presented of (1) great dissatisfaction with the tax; and (2) probable success of the election. What constitutes satisfactory proof is a question of fact for the commissioners court to determine in the first instance, subject to judicial review.

Very truly yours,



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