



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 25, 2020

The Honorable Charlie Geren  
Chair, Committee on House Administration  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

**Opinion No. KP-0329**

Re: Whether an employee of an appraisal district may serve as a trustee of an independent school district that is a participating taxing unit of the appraisal district under section 6.054 of the Tax Code (RQ-0335-KP)

Dear Representative Geren:

You ask whether “an employee of an appraisal district [may] also serve as a non-officer member of a school district board of trustees which participates in the appraisal district in light of Texas Tax Code [section] 6.054.”<sup>1</sup> You tell us that an employee of an appraisal district previously served on the board of trustees of an independent school district that was a participating taxing unit within the appraisal district. Request Letter at 1. You state that this person “served as an officer of the Board . . . but relinquished his office, becoming a non-officer member of the Board,<sup>2</sup> and then later resigned from the Board prior to January 1, 2020 to avoid any potential conflict” with section 6.054 of the Tax Code. *Id.* You inform us that since this person’s resignation, citizens “have expressed interest in again re-electing this person” to the school district’s board. *Id.* at 2. You ask “[i]f this person does not accept any officer positions and appointments on the Board of Trustees, would he be considered a non-officer under [section 6.054] and be permitted to . . . serve as an ordinary member of the board of trustees and as an employee of the appraisal district.” *Id.*

Section 6.054 of the Tax Code provides that “[a]n individual may not be employed by an appraisal district if the individual is: (1) an officer of a taxing unit that participates in the appraisal district; or (2) an employee of a taxing unit that participates in the appraisal district.” TEX. TAX CODE § 6.054; *see also id.* § 6.01(a), (b) (establishing an appraisal district in each county and

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<sup>1</sup>Letter from Honorable Charlie Geren, Chair, House Admin., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Feb. 27, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0335KP.pdf> (“Request Letter”).

<sup>2</sup>By “non-officer member” of the Board, we understand you to mean an elected trustee who does not perform additional duties such as a board president. *Cf.* Brief from Thomas A. Fuller, The Fuller Law Group, PLLC, on behalf of White Settlement Indep. Sch. Dist. at 2–5 (Mar. 30, 2020) (setting out argument pertaining to “ordinary, non-officer, member of the board”) (hereinafter “Fuller Brief”) (on file with the Op. Comm.).

providing that it is responsible for appraising property for each taxing unit in the district). In your request letter, you note that section 6.054 does not define officer. *See* Request Letter at 2. Your letter proffers a definition from the Business Organizations Code, which defines “officer” as “an individual elected, appointed, or designated as an officer of an entity by the entity’s governing authority or under the entity’s governing documents.” *Id.* (noting that under the Education Code a board of trustees is considered a “body corporate”); *see also* Fuller Brief at 2–5 (setting out similar argument). Your letter distinguishes an “officer” from a “director” of a board based on the Business Organizations Code’s definition of a “director” as “an individual who serves on the board of directors.” Request Letter at 2. It notes that it would “appear . . . a person serving on a board of trustees is considered to be ‘an individual’ serving on the board until such time as that person is elected or appointed by the board to serve as an ‘officer,’ after which time the person is considered an officer” of the board. *Id.* Your letter concludes that “[w]hen that person ceases to be an officer, that person returns to a status of being an individual serving on the board.” *Id.*

Despite any distinction between a director and an “officer” in the context of a private corporation, independent school districts “are local public corporations of the same general character as municipal corporations.” *San Antonio Indep. Sch. Dist. v. McKinney*, 936 S.W.2d 279, 283 (Tex. 1996) (further explaining “[t]hey are quasi-municipal corporations” (quotation marks and citation omitted)). For statutes concerning governmental entities, a Texas court is more likely to use the well-established definition of “officer” from the common law.<sup>3</sup> In *Aldine Independent School District v. Standley*, the Texas Supreme Court adopted a standard by which to determine whether a person occupying a particular position is an officer. 280 S.W.2d 578, 583 (Tex. 1955). Texas courts subsequently applied the standard developed in *Aldine* to various constitutional provisions and statutes. *See* Tex. Att’y Gen. Op. No. GA-0365 (2005) at 4–5 (discussing the development and use of the *Aldine* standard by the courts). Similarly, this office utilizes the *Aldine* standard to determine whether a position is an office. *See, e.g.*, Tex. Att’y Gen. Op. Nos. KP-0243 (2019) at 2–3 (applying *Aldine* to consider whether members of the Physician Health and Rehabilitation Advisory Committee were “officers” under provisions in the Civil Practice and Remedies Code), GA-0284 (2004) at 2–3 (applying *Aldine* to consider whether members of a water district’s board of directors were “officers” pursuant to several provisions of the Water Code).

Under *Aldine*, the “determining factor [that] distinguishes a public officer . . . is whether any sovereign function of the government is conferred upon the individual to be exercised by him [or her] for the benefit of the public largely independent of the control of others.” *Aldine*, 280

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<sup>3</sup>We decline the invitation of the Fuller Brief to construe Education Code sections 11.051(a) and 11.151(a)–(b) to refer to, or to incorporate by reference, the Business Organizations Code. *See* Fuller Brief at 2, 5 (citing Education Code sections 11.051(a) and 11.151(a)–(b), and arguing they reference corporate law); *see also Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 563, 566 (Tex. 2014) (recognizing that courts look for an undefined term’s common, ordinary meaning through “a wide variety of sources, including dictionary definitions, treatises and commentaries, [their] own prior construction of the term in other contexts, [and] the use and definitions of the word in other statutes”). Here, the phrase “a body corporate” is undefined in sections 11.051 and 11.151 but is likely used in its general sense to mean a separate legal entity. *See generally Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 636 (1819) (equating a body corporate with a “corporation[, which] is an artificial being, invisible, intangible, and existing only in contemplation of law[;] it possesses only those properties which the charter of its creation confers upon it”); Tex. Att’y Gen. Op. No. MW-10 (1979) at 1 (equating a body corporate with a unit of government).

S.W.2d at 583. The authority to govern and manage an independent school district is vested in its board of trustees. TEX. EDUC. CODE §§ 11.051(a)(1), .151(b). Consequently, this office consistently determines that a school board trustee holds an office under *Aldine*. See Tex. Att’y Gen. Op. Nos. KP-0114 (2016) at 2, GA-1083 (2014) at 2, JC-0490 (2002) at 1. Thus, irrespective of any additional leadership role a person may hold on the board of trustees, the person’s position as a trustee is an office that brings the person within the scope of section 6.054. Accordingly, an employee of an appraisal district may not serve as a trustee of an independent school district that is a participating taxing entity in the appraisal district.

S U M M A R Y

Section 6.054 of the Tax Code prohibits an individual who is an officer of a taxing unit that participates in an appraisal district from being employed by the appraisal district. The position of school board trustee is an office within the scope of section 6.054. Thus, an employee of an appraisal district may not serve as a trustee of an independent school district that is a participating taxing entity in the appraisal district.

Very truly yours,

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

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