



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2021

Mr. Tony Sims
Chambers County Auditor
Post Office Box 910
Anahuac, Texas 77514

Opinion No. KP-0389

Re: Authority of a conservation district to change the directors' terms of office from two to four years (RQ-0407-KP)

Dear Mr. Sims:

You ask whether the Trinity Bay Conservation District (the "District") board of directors possesses the authority to change the directors' terms of office from two to four years.¹

Background: the 1949 Act creating the District

In 1949, the Legislature created the District as a conservation and reclamation district under article XVI, section 59, of the Constitution. *See* TEX. WATER AUX. LAWS art. 8280-135 [Act of May 19, 1949, 51st Leg., R.S., ch. 282, § 1, 1949 Tex. Gen. Laws 510] ("1949 Act"); *see also* TEX. CONST. art. XVI, § 59 (authorizing the creation of conservation and reclamation districts). The 1949 Act established a five-person board of directors, each to serve two-year terms of office, elected in staggered elections. 1949 Act, § 2. While the 1949 Act has been amended several times, the amendments do not address the length of directors' terms.² In 1991, the Board sought amendments to the 1949 Act that would authorize the Board to change to four-year terms. *See* Request Letter at 1–2; Exhibit "A," Trinity Bay Conservation Dist. Bd. of Dirs., Resolution 91-1 (Jan. 22, 1991). You explain that four bills were introduced in the Legislature in 1991 to change the members' terms to four years but none passed.³ Request Letter at 2.

¹*See* Letter and Exhibits from Mr. Tony Sims, Chambers Cnty. Auditor, to Honorable Ken Paxton, Tex. Att'y Gen. at 2 (May 5, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0407KP.pdf> ("Request Letter" and "Exhibits A–C," respectively, on file with the Op. Comm.).

²*See* Act of Feb. 28, 1950, 51st Leg., 1st C.S., ch. 45, 1950 Tex. Gen. Laws 116, 116–18; Act of Apr. 24, 1957, 55th Leg., R.S., ch. 144, 1957 Tex. Gen. Laws 321, 321–22; May 15, 1969, 61st Leg., R.S., ch. 362, 1969 Tex. Gen. Laws 1114; Act of May 12, 1975, 64th Leg., R.S., ch. 249, 1975 Tex. Gen. Laws 604, 604–07; Act of May 7, 1987, 70th Leg., R.S., ch. 121, 1987 Tex. Gen. Laws 285, 285–86.

³*See* Tex. H.B. 2780, 72d Leg., R.S. (1991); Tex. H.B. 136, 72d Leg., 1st C.S. (1991); Tex. S.B. 45, 72d Leg., 1st C.S. (1991); Tex. S.B. 53, 72d Leg., 2d C.S. (1991).

You further tell us that in 2016, pursuant to the authority granted in subsections 41.0052(a) and (b) of the Election Code, the District board of directors adopted an order changing the election date of District board of director members from May 2016 to November 8, 2016, and extending members' terms to the November date. *Id.* at 2; Exhibit "C", Trinity Bay Conservation District Board of Directors, Order Transitioning Board of Director Elections to November of Even-Numbered Years and Extending Terms of Directors (Feb. 17, 2016).⁴ The order recites: "Those positions to have appeared on the May, 2016 ballot will appear on the November, 2016 ballot and will be 4-year terms." Exhibit "C" at 1. You ask whether the District board of directors possessed authority to change members' terms from two-years to four-years. Request Letter at 4.

Chapter 49 of the Water Code

Because the 1949 Act creating the District established board member terms of two years, unchanged by any amendment specifically concerning the District, we must examine other applicable law to determine whether the District board of directors' terms remain established as two-year terms. You reference subsection 49.103(a) of the Water Code, which provides that water district board members serve four-year terms. Request Letter at 3; TEX. WATER CODE § 49.103(a). The statute specifies that chapter 49

applies to all general and special law districts⁵ to the extent that the provisions of this chapter do not directly conflict with a provision in any other chapter of this code or any Act creating or affecting a special law district. In the event of such conflict, the specific provisions in such other chapter or Act shall control.

TEX. WATER CODE § 49.002(a).⁶ The chapter defines "district" as including any district or authority created by authority of article XVI, section 59 of the Constitution, "regardless of how created."⁷ *Id.* § 49.001(1). Accordingly, the District is generally governed by chapter 49 of the Water Code, but only to the extent chapter 49 does not directly conflict with a provision in another Water Code provision or an Act creating a special-law district. *Id.* §§ 49.001(1), .002(a). Subsection 49.002(a) contains a choice-of-conflicting-law provision, stating that in the event of such a conflict, the other Water Code provision or the special district law control over section 49.002. *Id.* § 49.002(a).

⁴See TEX. ELEC. CODE § 41.0052(a), (b) (authorizing specified districts to change their general election date for officers to the November uniform election date and conform the terms of office to the new election date).

⁵General-law water districts are those created according to procedures prescribed in the Water Code, while a special-law district is created by a specific act of the Legislature. See *Save Our Springs All., Inc. v. Lazy Nine Mun. Util. Dist. ex rel. Bd. of Dirs.*, 198 S.W.3d 300, 313 (Tex. App.—Texarkana 2006, pet. denied). Some statutes creating a special-law district were neither repealed nor placed in the Water Code and remain in effect. See TEX. WATER CODE § 1.001(d). The 1949 Act creating the District is such a law. See TEX. WATER AUX. LAWS 47, 79 (Vernon's 2020 Pamphlet).

⁶The subsection excepts certain districts governed by chapter 36 of the Water Code concerning groundwater conservation districts. TEX. WATER CODE § 49.002(a), (b). This subsection also includes an exception that is not pertinent here.

⁷The definition contains other exceptions not pertinent here. See *id.* § 49.001(1) (excepting specified districts including districts governed by chapter 36 of the Water Code concerning groundwater conservation districts).

With respect to board members' terms, section 49.103 provides in relevant part:

(a) [With an exception not pertinent here], the members of the board of a district shall serve staggered four-year terms.

....

(e) Section 49.002 notwithstanding, in all areas of conflict the provisions of Subsections (a) and (b) shall take precedence over all prior statutory enactments.

Id. § 49.103(a), (e). By its plain terms, section 49.103 not only establishes a four-year term for directors in subsection (a) but also includes its own choice-of-conflicting-law provision in subsection (e), resolving any conflict with prior statutory enactments about directors' terms in favor of subsection (a). *Id.*

When a statute expressly states how to resolve conflicts in statutes, courts determine priority according to the statute's language. *See Molinet v. Kimbrell*, 356 S.W.3d 407, 413–14 (Tex. 2011); *see also* Tex. Att'y Gen. Op. No. KP-0151 (2017) at 3 (discussing *Molinet*). Here, two choice-of-conflicting-law provisions potentially apply—subsection 49.002(a) for chapter 49 generally and subsection 49.103(e) for board member terms specifically. *Compare* TEX. WATER CODE § 49.002(a), *with id.* § 49.103(a), (e). But subsections 49.103(a) and (e) plainly state that directors shall serve staggered four-year terms, “section 49.002 notwithstanding.” *Id.* § 49.103(a), (e); *see also Molinet*, 356 S.W.3d at 413 (holding that “notwithstanding any other law” in a statute evidenced legislative intent that it “prevails over conflicting law”). Moreover, the directive in subsection 49.103(a) “take[s] precedence over all prior statutory enactments.” TEX. WATER CODE § 49.103(e). Both section 49.002(a) and the 1949 Act are “prior statutory enactments.”⁸ Therefore, subsection 49.103(a) governs the length of directors' terms. Subsection 49.103(a) expressly establishes four-year staggered terms for district board members.⁹ *Id.* That being the case, we do not address your second question conditioned on a conclusion to the contrary.

⁸*See* Act of May 24, 1995, 74th Leg., R.S., ch. 715, § 2, 1995 Tex. Gen. Laws 3755, 3756 (enacting Water Code section 49.002); Act of May 30, 1997, 75th Leg., R.S., ch. 1070, § 4, 1997 Tex. Gen. Laws 4074, 4075 (amending Water Code section 49.103(e) to provide that subsection (a) prevails over conflicting prior laws).

⁹You reference an Attorney General opinion, DM-269, that concluded the directors of the El Paso Water Control and Improvement District held two-year terms contrary to the Water Code's provision for four. Request Letter at 3; Tex. Att'y Gen. Op. No. DM-269 (1993). The 1997 amendment to subsection 49.103(e) of the Water Code superseded the conclusion stated in DM-269 to the extent of any inconsistency.

S U M M A R Y

While the 1949 special law creating the Trinity Bay Conservation District established a board of directors for the District with members having two-year terms, the subsequently enacted section 49.103 of the Water Code provides for the members of the board of certain districts, including the Trinity Bay Conservation District, to serve staggered four-year terms.

Very truly yours,

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

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

MURTAZA F. SUTARWALLA
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

WILLIAM A. HILL
Assistant Attorney General, Opinion Committee