



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

July 12, 2023

The Honorable Heather Stebbins
Kerr County Attorney
700 Main Street, Suite BA-103
Kerrville, Texas 78028

Opinion No. JS-0007

Re: Whether a volunteer fire department is a political subdivision for purposes of a land exchange with a county under Local Government Code subsection 263.006(e)
(RQ-0497-KP)

Dear Ms. Stebbins:

You ask whether a volunteer fire department is a political subdivision for purposes of a land exchange with a county under Local Government Code subsection 263.006(e).¹

Local Government Code section 263.006 permits a county commissioners court to authorize an “exchange of an interest in real property owned by the county for an interest in real property owned by an individual, private partnership or corporation, or other private entity, to be used for one or more public purposes for which a county otherwise may acquire land.” TEX. LOC. GOV’T CODE § 263.006(a). With some exceptions, section 263.006 requires a county to publish notice of the county’s intent to consider exchange offers and specifies the location, timing, and duration of the notice. *See id.* § 263.006(b). The section also requires the county to obtain an appraisal of the interest in real property owned and to be exchanged and prohibits any exchange that is less than the fair market value of the real property being exchanged by the county. *Id.* § 263.006(c). Pursuant to subsection 263.006(e), those provisions do not apply to “the exchange of an interest in real property owned by a county for an interest in real property owned by the United States, this state, or a municipality or other *political subdivision* of this state.” *Id.* § 263.006(e) (emphasis added). As you provide no context for your question, we address your question only generally without regard to any specific land exchange. *See* Request Letter at 2.

Local Government Code chapter 263 does not define the term “political subdivision.” *See generally* TEX. LOC. GOV’T CODE § 263.001–.251. Texas statutes are replete with definitions of “political subdivision” in specific contexts for particular purposes, but because of the limitation to

¹*See* Letter from Honorable Heather Stebbins, Kerr Cnty. Att’y, to Off. of the Att’y Gen., Opinion Comm. at 2 (Jan. 3, 2023), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2023/RQ0497KP.pdf> (“Request Letter”).

particular purposes those definitions are not helpful here.² *See, e.g.*, TEX. OCC. CODE § 2001.002(21) (defining “[p]olitical subdivision” for purposes of the Bingo Enabling Act); TEX. HEALTH & SAFETY CODE § 691.021 (defining “political subdivision” for purposes of the donation and distribution of bodies and anatomical specimens). In contrast, the Texas Supreme Court has defined the term for general use. *See Guar. Petroleum Corp. v. Armstrong*, 609 S.W.2d 529, 531 (Tex. 1980). In *Guaranty Petroleum*, the Court considered whether a navigation district was a state agency or a political subdivision and identified three attributes of a political subdivision. *Id.* As a general matter, the Court noted that a political subdivision has certain attributes: (1) jurisdiction over a portion of the state, as opposed to jurisdiction throughout the state; (2) a governing body comprising members who are locally elected or appointed by locally elected officials; and (3) the power to assess and collect taxes. *Id.* Texas courts have subsequently used those attributes to determine whether other entities are political subdivisions. *See Veigel v. Texas Boll Weevil Eradication Found., Inc.*, 549 S.W.3d 193, 199 (Tex. App.—Austin 2018, no pet.); *City of El Paso v. El Paso Cmty. Coll. Dist.*, 729 S.W.2d 296, 299 (Tex. 1986). Absent a legislative definition in Local Government Code chapter 263, we consider your question under the Texas Supreme Court’s general definition of “political subdivision” in *Guaranty Petroleum*.

Government Code chapter 419 provides for the Texas Commission on Fire Protection (the “Commission”) and gives it certain regulatory authority with respect to fire fighters and fire departments. *See* TEX. GOV’T CODE §§ 419.001–.909. Chapter 419 authorizes the Commission to assist fire departments in certain matters and to “establish minimum educational, training, physical, and mental standards for admission to employment as fire protection personnel” *Id.* § 419.022(a)(5); *see also id.* §§ 419.028–.31. Most of chapter 419 relates to paid employee fire fighters and fire departments but subchapter D specifically concerns volunteer firefighters and volunteer fire departments. *See id.* §§ 419.071–.073. Subchapter D allows the Commission to provide for a voluntary certification program for volunteer fire fighters and volunteer fire departments. *See id.* § 419.071; *see also id.* § 419.071(c) (providing that a volunteer fire fighter or a volunteer fire department is not required to participate in any component of the Commission’s program under chapter 419). While chapter 419 concerns volunteer fire departments, it does not provide for their creation, governance, or general powers. Moreover, we find no statutory scheme that expressly provides for the creation, governance, or powers of a volunteer fire department. *Cf., e.g.*, TEX. LOC. GOV’T CODE §§ 501.054(a), 504.051(b), 505.051(b), 501.010 (providing collectively for the creation of nonprofit economic development corporations by cities with directors appointed by locally elected officials and no authority to tax).

Rather, volunteer fire departments are oftentimes organized as nonprofit entities. *Cf., e.g.*, TEX. CIV. PRAC. & REM. CODE § 78.101(2) (recognizing, in the definition of a “[v]olunteer fire department,” its status as a nonprofit organization); TEX. GOV’T CODE § 614.071(6) (same); TEX. LOC. GOV’T CODE § 352.001(c) (referring to an “incorporated” volunteer fire department). Accordingly, we look to provisions in the Texas Nonprofit Corporation Law and the Uniform Unincorporated Nonprofit Association Act. *See* TEX. BUS. ORGS. CODE § 1.008(d) (providing that

²You refer us to Government Code subsection 2175.004(2), which provides that a volunteer fire department is a political subdivision. Request Letter at 1; TEX. GOV’T CODE § 2175.004(2). By its terms, subsection 2175.004(2) does not apply outside of chapter 2175. TEX. GOV’T CODE § 2175.004(2) (“For purposes of *this chapter* . . . a volunteer fire department is considered a political subdivision.” (emphasis added)).

chapters 20 and 22 “and the provisions of Title 1 [of the Business Organizations Code] to the extent applicable to nonprofit corporations may be cited as the ‘Texas Nonprofit Corporations Law’”), 1.008(k) (providing that chapter 252 of the Business Organizations Code “may be cited as the ‘Uniform Unincorporated Nonprofit Association Act’”).

Generally, a “[n]onprofit corporation” is a corporation governed as a nonprofit corporation under Business Organizations Code chapter 22. *Id.* § 1.002(59). It is a “corporation no part of the income of which is distributable to a member, director, or officer of the corporation, except as provided by Section 22.054.”³ *Id.* § 22.001(5). A nonprofit corporation may be organized “for any lawful purpose,” including “charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural, and horticultural purposes.” *Id.* §§ 22.051, 2.002(1). A nonprofit corporation is managed by a board of directors or by its members. *See id.* §§ 22.201, 22.202(a). When managed by a board, the initial directors are identified in the corporation’s certificate of formation. *Id.* § 22.205; *see also id.* §§ 3.001 (requiring a certificate of formation for filing entities), 1.002(6)(A) (defining “[c]ertificate of formation” to mean “the document required to be filed with the filing officer under Chapter 3 to form a filing entity”), 1.002(36)(A)(i) (including a certificate of formation as part of an entity’s governing documents). Subsequent directors are “elected, appointed, or designated in the manner provided by the [corporation’s] certificate of formation or bylaws.” *Id.* § 22.206. Nothing in chapter 22, or the other provisions in the Texas Nonprofit Corporation Law, provides for those charged with the management of a nonprofit corporation to be locally elected or appointed by locally elected officials. *See id.* §§ 22.001–.516; *see also id.* §§ 20.001–.002. Even in some instances where a volunteer fire department to be governed by those who are locally elected or appointed by locally elected officials, it is dispositive to the analysis that no provision in the Texas Business Organization Code authorizes a nonprofit corporation to assess and collect taxes. *See id.*

Under the Uniform Unincorporated Nonprofit Association Act, a “[n]onprofit association” is “an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose.” *Id.* § 252.001(2). Like a nonprofit corporation, a nonprofit association has no authority under the Uniform Unincorporated Nonprofit Association Act to assess and collect taxes. *See id.*

Accordingly, generally a nonprofit volunteer fire fighting entity does not constitute a political subdivision under the *Guaranty Petroleum* analysis, and thus, a court would likely conclude that a volunteer fire department organized as a nonprofit entity is not a political subdivision for purposes of Local Government Code subsection 263.006(e).⁴ *See Guar. Petroleum Corp.*, 609 S.W.2d at 531.

³Not relevant here, section 22.054 authorizes a nonprofit corporation to make distributions of its income to members who are themselves nonprofit corporations and are exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code in certain circumstances. TEX. BUS. ORGS. CODE § 22.054(4).

⁴You do not ask about the status of an entity with which a volunteer fire department may be associated. *See* Request Letter at 1–2. Entities such as emergency services districts are political subdivisions. *See, e.g.,* TEX. HEALTH & SAFETY CODE § 775.031(a) (providing that an emergency services district “is a political subdivision of the state”).

S U M M A R Y

Local Government Code section 263.006 allows a county commissioners court to exchange an interest in real property for an interest in another if it meets certain notice and appraisal requirements. Subsection 263.006(e) exempts from those requirements a real property exchange with specified types of entities, including a political subdivision of this state. A court would likely conclude that a volunteer fire department organized as a nonprofit entity is not a political subdivision within the scope of subsection 263.006(e).

Very truly yours,

A handwritten signature in black ink, appearing to read "John Scott", with a large, stylized initial "J" and a smaller "S" and "C" following.

JOHN SCOTT
Provisional Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

D. FORREST BRUMBAUGH
Deputy Attorney General for Legal Counsel

AUSTIN KINGHORN
Chair, Opinion Committee

CHARLOTTE M. HARPER
Assistant Attorney General, Opinion Committee