

TEXAS EDUCATION AGENCY

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Felipe T. Alanis
Commissioner of Education

April 14, 2003

RQ-0042-6A

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APR 17 2003

OPINION COMMITTEE

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OPEN RECORDS DIVISION

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-43062-03
I.D. # 43062

Re: Dallas Independent School District Redistricting Opinion Request

Dear General Abbott:

On behalf of the Dallas ISD, I respectfully request your opinion on an issue regarding redistricting of trustee districts for the Dallas Independent School District (D.I.S.D.).

Background

The Dallas Independent School District is governed by a Board of Trustees elected from nine single-member districts. This particular single-member district structure was mandated by the Legislature in 1973, when it amended the 1949 statute under which D.I.S.D. operates. Act of May 26, 1973, 63rd Leg., R.S., ch. 211, § 1, 1973 Tex. Sess. Law Serv. (Vernon), amending Act of April 24, 1947, 50th Leg., R.S., ch. 171, § 6, 1947 Tex. Sess. Law Serv. (Vernon), as amended (V.T.C.S., art. 2783d). Insofar as redistricting is concerned, the key provisions of article 2783d are:

The Board is to have nine single-member districts. V.T.C.S., art. 2783d, § 6(a). Act of May 26, 1973, 63rd Leg., R.S., ch. 211, § 1, 1973 Tex. Sess. Law Serv. (Vernon).

The board shall apportion and redistrict "[n]o later than ninety (90) days before the first election held on or after the one hundred fiftieth (150th) day following the day on which the district may take official notice of a United States decennial."¹ V.T.C.S., art. 2783d, § 6(b), Act of May 25, 1979, 66th Leg., R.S., ch. 798, § 1, 1979 Tex. Sess. Law Serv. (Vernon).

"[A]t the first election at which redistricting following a census is to be effective, all positions on the Board shall be filled. . . [T]he Board members elected at an election for which redistricting is effective shall draw lots so that three (3) members serve for a term of one (1) year, three (3) members serve for a term of two (2) years, and three (3) members serve for a term of three (3) years." V.T.C.S., art. 2783d, § 6(c), Act of February 16, 1981, 67th Leg., R.S., ch. 102, § 1, 1981 Tex. Sess. Law Serv. (Vernon).

In 1983, the Legislature enacted a general law permitting districts with a certain number of students to adopt an election system in which at least seventy percent (70%) of the trustees were elected

¹ The Board is permitted to take official notice of the federal census on September 1 of the year after the calendar year in which the census was taken so long as the report was published on or before that date. TEX. GOV'T CODE, § 2058.001. In the case of the 2000 federal census, the recognition date was September 1, 2001.

from single-member districts. Act of May 30, 1983, 68th Leg., R.S., ch. 316, § 1, 1983 Tex. Sess. Law Serv. (Vernon) (TEX. EDUC. CODE, § 23.024). That Act, however, did not apply to any district "that elects trustees from single-member districts in accordance with Section 23.023 of this code or other general or special [law]."² Id. (TEX. EDUC. CODE, § 23.024(j)). The essence of section 23.024 was carried forward into the most recent revision of the Education Code, and is now found at section 11.052, which permits an independent school district, after notice and hearing, to order that trustees of the district shall be elected from single-member trustee districts or that not fewer than seventy percent (70%) of the members of the board of trustees shall be elected from single-member trustee districts, with the remaining trustees to be elected from the district at large. TEX. EDUC. CODE, § 11.052(a).

Additionally, section 11.053(a) of the Education Code provides:

(a) the board of trustees of an independent school district that adopts a redistricting plan under Section 11.052 may provide for the trustees in office when the plan is adopted or the school district is redistricted to serve for the remainder of their terms in accordance with this section.

When the current version of the Education Code was enacted, article 2783d was not repealed.

The provision of section 23.024 of the prior Education Code (indicating that this particular section did not apply to districts that elected trustees pursuant to other general or special law) was not carried forward into the current section 11.052; however, section 311.026 of the Government Code, which is part of the Code Construction Act, provides that where a special law applies and contains provisions that are irreconcilable with the provisions of an otherwise applicable general law, the special law provisions apply.

In 2001 and 2002, the D.I.S.D. conducted an extensive redistricting process and adopted a redistricting plan on March 20, 2002.³ It was used for the trustee election conducted in 2002. Pursuant to article 2783d, all positions were before the voters in that election and the trustees who were elected drew lots to determine the length of their terms.

Questions Presented

After the 2002 election, at least two trustees have expressed interest in revising parts of the redistricting plan. The Board has received legal advice that its redistricting is governed by article 2783d. Another attorney has advised that it has the option of proceeding under sections 11.052 and 11.053. Accordingly, the Texas Education Agency seeks your opinion on the following questions:

1. Is the D.I.S.D. redistricting governed by article 2783d? If so, does the language of section 6(b) of that statute (requiring that redistricting be completed no later than the 90th day before

² Section 23.023 generally required all districts with 66,000 or more students to have an election system with seven single-member districts and two at-large districts. Although the D.I.S.D. met the 66,000 student requirement, section 23.023(j) provided that the section did not apply to D.I.S.D. Thus, it continued to be governed by section 2783d, which would qualify as other general or special law.

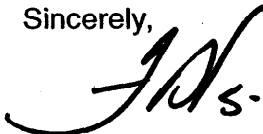
³ The plan was originally adopted on October 1, 2001; however, a state district judge determined that some executive session discussions should have been conducted in open meetings and that notice of the meeting at which the plan was finally adopted was posted for slightly less than 72 hours. *Garza v. Dallas Ind. Sch. Dist.*, No. 01-8448-J, 191st. Court, Dallas County, Texas. The court required that the redistricting process be reopened. The District conducted additional hearings and ultimately adopted the same plan, which was the precleared by the Department of Justice under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Because of the delay caused by re-adoption of the plan, the district court moved the election day from May 4, 2002, to July 27, 2002.

the first election after the census can be recognized) prevent the Board from conducting a new redistricting prior to the next census?

2. If the D.I.S.D. is permitted under Texas law to re-open the redistricting process, may it limit the process in the following ways:
 - a) by specifying the particular voting precincts to be changed; or
 - b) by specifying the particular trustee districts to be affected?Or, must the District re-open the redistricting process to permit alteration of any and all previously-drawn boundaries?
3. If article 2783d applies and the Board is able to revise its districts at this time, must all nine trustee positions be on the ballot for the next election, or will only those whose districts have changed need to be on the ballot?
4. May the Board elect to redistrict under section 11.052? If so, may it reopen the redistricting process at any time?
5. If the Board is authorized to proceed under section 11.052, must it adopt a system that is different than one containing nine single-member districts? Specifically, since it already has nine single-member districts, would it be required to convert to a system with either eight single-member districts and one at-large position or seven single-member districts and two at-large⁴ in order to take advantage of section 11.052?
6. Will section 11.053 apply to the D.I.S.D. only if it proceeds under section 11.052?

Thank you for your consideration of this matter.

Sincerely,



Felipe Alanis
Commissioner of Education

FADA/lmw

⁴ As the Board must have nine members, these are the only two combinations that are different than the current nine single-member district scheme yet still comply with the section 11.052(a) requirement that at least 70 percent of the trustees be elected from single-member districts.



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August 20, 2003

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # RD-00042-GA
I.D. # 43226

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AUG 20 2003

OPINION COMMITTEE

Re: Dallas Independent School District Redistricting Opinion Request (Request No. 0042-GA)

Dear General Abbott:

You have recently inquired as to whether the Texas Education Agency is still seeking an opinion from your office regarding redistricting and election issues confronting the Dallas Independent School District ("D.I.S.D."). Indeed, we continue to seek your guidance regarding the issues unaddressed by the enactment of TEX. EDUC. CODE § 11.064 (formerly Tex. S.B. 688, 78th Leg., R.S. (2003)).

We understand that TEX. EDUC. CODE § 11.064 allows the D.I.S.D. Board of Trustees to make its residency requirements, election procedures, and length of terms consistent with those of other school districts pursuant to other Texas law. It specifically provides that TEX. EDUC. CODE § 11.053 applies to the D.I.S.D., but that certain portions of § 11.052 do not. However, this new law does not address other issues pertaining to redistricting. Consequently, several of our original questions remain unanswered by the passage of this legislation, and we respectfully request an opinion on those remaining issues as follows. The district has asked that you observe the original timeline for an opinion if at all possible as their board may wish to redistrict in time for elections next spring.

Background

The Dallas Independent School District is governed by a Board of Trustees elected from nine single-member districts. This particular single-member-district structure was mandated by the Legislature in 1973, when it amended the 1949 statute under which D.I.S.D. operates. Act of May 26, 1973, 63rd Leg., R.S., ch 211, § 1, 1973 Tex. Sess. Law Serv. (Vernon) *amending* Act of April 24, 1947, 50th Leg., R.S., ch 171, § 6, 1947 Tex. Sess. Law Serv. (Vernon), as amended (V.T.C.S., art. 2783d). Insofar as redistricting is concerned, the key provisions of article 2783d are:

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