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OPINION COMMITTEE

Harvey Hilderbran
MEMBER

The Texas House of Representatives
State Representative • District 53

District Office:
125 Lehmann Drive
Kerrville, Texas 78028
830-257-2333

P.O. Box 2910
Austin, Texas 78768-2910
512-463-0536

August 18, 2003

FILE # ML-43238-03
I.D. # 43238

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

RQ-0098-GA

RE: Request for Attorney General's Opinion concerning whether municipal residents who are served by a special utility district are precluded from being qualified from voting in the district's elections because the district's boundary excludes all municipalities within the geographic area that makes up the district.

Dear General Abbott:

Please accept this letter as a request for an opinion on the above-referenced issue. The background, as to the question posed to you, is set forth in the enclosed copies of the following documents:

- Jonah Water Special Utility District's Board Minutes of September 19, 2002;
- September 26, 2002, letter from Ms. Susan Walton of the Texas Commission on Environmental Quality (TCEQ) to Ms. Tommy Walker;
- September 26, 2002, letter from Ms. Susan Walton of TCEQ to the Board of Directors of the Jonah Water Special Utility District;
- October 8, 2002, letter from Mr. Karl Moeller, attorney for Jonah Water Special Utility District, to Ms. Walton of TCEQ; and
- October 14, 2002, letter from Ms. Susan Walton of TCEQ to Ms. Walker.

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The factual background, which is derived from the records on file with TCEQ, is as follows:

In 1971, Jonah Water Supply Corporation (JWSC), an investor owned utility, was formed to provide rural central Williamson County with a potable water supply. One of the communities served by JWSC was the community of Weir, Texas, via a certificate of convenience and necessity numbered 10970. In 1986, the Weir Water Works (Works), an investor owned utility, applied for a certificate of convenience and necessity after it had acquired a private water utility. The Works was issued a certificate numbered 11977. JWSC and Works served different portions of the community depending upon the service area of their respective certificate of convenience and necessity (CCN). The other source of water for residents of the community included well water. In 1987, the Weir community incorporated as a municipality.


In 1992, JWSC was dissolved and reformed as the Jonah Water Special Utility District (District). The District's geographic boundaries excluded all municipalities within its service area, including the city of Weir. The District continues to provide water to its CCN portion of Weir.

In 2002, some Weir citizens, whose water meters are with the District, desired to vote in the District's election. Prior to voting, they were required to submit challenge voter affidavits because their eligibility to vote in the election was disputed.

I am requesting an opinion as to whether the citizens of a municipality, such as the aforementioned citizens, who are in a CCN area served by a special utility district, can be lawfully denied the right to vote in a district's election. Please note that, under current Water Code Section 65.102, a "user of the facilities of a district" is qualified to serve as a director of the District.

I thank you for your consideration of this matter.

Sincerely,



Harvey Hilderbran,
Chairman, State Cultural and Recreational Resources
State Representative
District 53