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OPINION COMMITTEE

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June 23, 2004

Texas Attorney General Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Opinion

Dear General Abbott:

The Board of the Jefferson County Waterway and Navigation District is interested in obtaining health and retirement benefits for its District Commissioners. We have been asked to seek an Opinion on issues impacting such participation:

1. Would such benefits first have to be approved by the Jefferson County Commissioners Court?
2. Are the District Commissioners officers and/or employees of the District?
3. May the appropriate authority also approve payment for a portion of dependent coverage if the District Commissioners are eligible for health benefits?

I.

First, would such benefits have to be approved by the Jefferson County Commissioners Court because of both the statute creating the District and Section 62.070 of the Water Code?

In 2001 H.B. No.3653 authorized the creation of the Jefferson County Waterway and Navigation District and the merger of the Jefferson County Navigation District with that district. A confirmation election was held November 6, 2001 and the creation of the District was approved by the voters. On January 7, 2002 the Jefferson County Commissioners Court approved the merger of the Jefferson County Navigation District into the newly created Jefferson County Waterway and Navigation District effective January 15, 2002 at 12:01 a.m. Section 8(a) of H.B. No. 3653 reads as follows:

The district is governed by five navigation and canal commissioners appointed by the commissioners court.

The Jefferson County Commissioners Court appointed Commissioners, whose compensation is determined by the Jefferson County Commissioners Court pursuant to Section 62.070 of the Water Code:

Each commissioner shall receive for his services the compensation determined by the commissioners court of the county of jurisdiction.

Are health and retirement benefits included under the term "compensation" which must be determined by the Jefferson County Commissioners Court? Or may the Jefferson County Waterway and Navigation District Commissioners act on their own to obtain benefits?

II.

Are the Jefferson County Waterway and Navigation District Commissioners "district officers and/or employees under the law?"

The Jefferson County Waterway and Navigation "is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution." (H.B. 3653 Section 1.(b)). Title 4 of the Water Code

concerns General Law District. Section 49.001(1) specifies in part that:

"District" means any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created.

Section 49.069 provides for employee benefits for General Law

Districts:

(a) The board may provide for and administer retirement, disability, and death compensation funds for the employees of the districts.

(b) The board may establish a public retirement system in accordance with the provisions of Chapter 810, Government Code. The board may also provide for a deferred compensation plan described by Section 457 of the Internal Revenue Code of 1986 (26 V.S.C. Section 457).

(c) The board may include hospitalization and medical benefits to its employees as part of the compensation paid to the officers and employees and adopt any plan, rule, or regulation in connection with it and amend or change the plan, rule, or regulation as it may determine.

If the term "district officers" merely included the Board president and secretary, then all district commissioners would not be included. If the term "officer" means the manager, then none of the district commissioners would appear to be eligible. If the district commissioners are employees, then they apparently are included under this statute.

Further, under Sec. 60.014 of the Water Code the commission of a General Law District has the following authority:

(a) The commission may include hospitalization and medical benefits for officers and employees as part of the compensation paid to the officers and employees.

(b) The commission may provide for the benefits in Subsection (a) of this section by plan, rule, or regulation, and may change any plan, rule or regulation from time to time.

Section 172.002 of the Local Government Code establishes that one of

the reasons for setting up political subdivision uniform group benefits is to:

(6) recognize the service to political subdivisions by elected officials and employees of affiliated service contractors by extending to them the same accident and health benefits coverages as are provided for political subdivision employees

The issue of whether or not the district commissioners are "officers" is also important when considering Section 810.001 of the Government Code, which deals with the establishment of a public retirement system. It defines a "public entity" in part as a water district "or other special purpose district or authority that is created pursuant to state law and that is not an agency of the state." Section 810.001(b) reads in part:

The governing body of a political entity may establish and maintain a public retirement system for its appointive officers and employees and determine the benefits, funding source and amount and administration of the system.

III.

The third issue is whether the appropriate authority, either the Jefferson County Commissioners Court or the Jefferson County Waterway and Navigation District, may also approve payment for a portion of dependent coverage for the district commissioners. Section 172.004(c) of the Local Government reads:

A political subdivision also may include under the coverage dependents of the officers, employees, and retirees."

Once again, the issue of whether or not a district commissioner is an officer or employee would seem to be the determining factor as to whether the dependents of district commissioners are eligible for inclusion in a benefits plan.

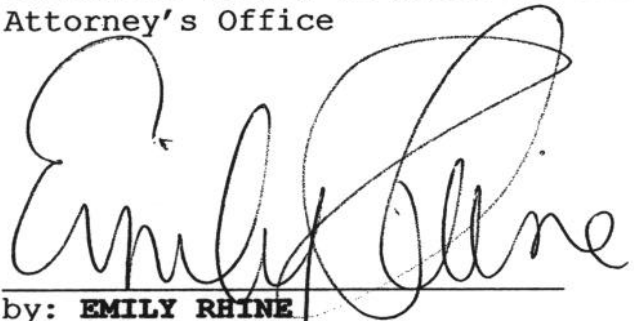
Respectfully submitted,

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TOM RUGG

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Jefferson County Criminal District
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A handwritten signature in cursive script, appearing to read "Emily Rhine". The signature is written in black ink and is positioned above a horizontal line.

by: **EMILY RHINE**
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