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OPINION COMMITTEE

8 August 2012

BILL CALLEGARI, P.E.
STATE REPRESENTATIVE

FILE # ML-47113-12
I.D. # 47113

Honorable Greg Abbott
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

RQ-1076-GA

Re: Request for an Attorney General Opinion on the Question whether a Junior College District is considered a "School District" for purposes of Local Government Code Section 395.022(b).

Dear General Abbott:

An opinion is requested concerning the definition of "school district" as used in Texas Local Government Code Section 395.002(b). Specifically, an opinion is requested as to whether a junior college district is considered a "school district" and therefore exempt from paying impact fees under Section 395.002(b) of Texas Local Government Code.

Background:

The City of Weatherford is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code. As such, the City of Weatherford is considered a "political subdivision" as defined in TEX LOCAL GOV'T CODE § 395.001(7) and may impose an impact fee on land within the City's corporate boundaries or extraterritorial jurisdiction. TEX LOCAL GOV'T CODE ANN. § 395.011(b) (West).

Weatherford Junior College is a Texas public junior college established pursuant to chapter 130 of the Texas Education Code supervised by the Coordinating Board, Texas College and University System. TEX. ED. CODE ANN. § 130.001(a) (West).

Argument:

The City of Weatherford believes Section 395.002(b) applies only to Independent School Districts and therefore Weatherford Junior College is not exempt from paying impact fees under

Section 395.002(b) of the Local Government Code because Weatherford Junior College is not an independent school district.

Texas Local Government Code section 395.022 was amended in 2007 to add subsection (b). S.B. 883, 80th Reg. Sess. (Tex. 2007). Subsection (b) reads as follows:

(b) A school district is not required to pay impact fees imposed under this chapter unless the board of trustees of the district consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board of trustees considers advisable to provide for the payment of the fees.

Therefore the legislature created an exemption from payment of impact fees for a school district unless the school district agrees to pay the fee. *Id.* Because subsection (b) was enacted relatively recently, there is neither a case or an attorney general opinion providing direct guidance as to what “school district” means as used in section 395.022(b). However, the legislative history written by the author of the bill offers insight into the intended meaning of “school district” for purposes of Local Government Code section 395.022(b).

State Senator Bob Deuell was the primary author of S.B. 883 and he provided a statement of intent dated April 2, 2007. SENATE RESEARCH CTR., BILL ANALYSIS, Tex. S.B. 883, 80th Leg., R.S. (2007) (Statement of Intent). Among other things, Senator Deuell states, “S.B. 883 exempts *independent* school districts from impact fees, unless certain conditions are met.” *Id.* (emphasis added). The Senator further opined that “*independent* school districts are not able to choose where they develop,” and “growing school populations dictate that new schools be built which results in impact fees for the school district.” *Id.* (emphasis added). Both of these statements clearly indicate that the primary author of Senate Bill 883 intended “school district” as used in section 395.022(b) to mean an independent school district only.

Additionally, while answering whether a home-rule city is required to pay impact fees imposed under chapter 395, your office has recognized that subsection (b) “created an exception, *applicable only to certain school districts*, from the requirement to pay an impact fee.” Tex. Att’y Gen. Op. No. GA-0821 (2010) at 2 (emphasis added) (citing Senator Deuell’s Statement of Intent, *supra.*). Taken together, the Statement of Intent written by Senator Deuell and the reliance on that statement in a recent opinion from your office indicates that subsection (b) of Local Government Code section 395.022 operates to exclude only independent school districts from the obligation of paying impact fees.

Given the foregoing, subsection (b) seems to exclude independent school districts only. Under Texas law, a junior college district differs from an independent school district in a few key aspects.

Independent school districts are governed by the Texas Education Code, Title 2, “Public Education;” while junior college districts are governed by Texas Education Code, Title 3, “Higher Education.” Independent school districts are responsible for implementing the state’s system of public education to “ensure that all children have access to a quality education.” TEX. ED. CODE ANN. § 4.001 (West). On the other hand, junior college districts offer “continuing

education, remedial and compensatory education consistent with open-admission policies.” TEX. ED. CODE ANN. § 130.0011 (West). Finally, in most instances, the governing board for an independent school district operates and is elected separately from the governing board for a junior college district. *See* TEX. ED. CODE ANN. § 130.082 (West); *see also* TEX. ED. CODE ANN. § 11.051 (West).

The Texas Legislature’s treatment of school districts indicates that an independent school district is not intended to be treated in the same manner as a junior college district unless it is specifically allowed by statute. *See* TEX. ED. CODE ANN. § 130.084(a) (West) (“The governing board of a junior college district shall be governed in the establishment, management, and control of a public junior college in the district by the general law governing the establishment, management, and control of independent school districts insofar as the general law is applicable”).

The City of Weatherford believes the intention to treat the districts differently extends to Texas Local Government Code section 395.022(b) in that only an independent school district was intended to be exempted under subsection (b). For the reasons stated above, I ask that you provide an opinion to clarify whether a junior college district is considered a “school district” and therefore exempt from paying impact fees under Section 395.002(b) of the Local Government Code.

Sincerely,

A handwritten signature in cursive script, appearing to read "W.A. Callegari".

W.A. Callegari