

Opinion_Committee

From: Sara Haenes <Sara.Haenes@house.state.tx.us>
Sent: Friday, August 14, 2015 9:09 AM
To: Opinion_Committee
Cc: Larry Phillips; Lauren Cacheaux
Subject: AG Opinion Request from Chairman Larry Phillips
Attachments: AG Opinion Request.docx; Appendices.pdf

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AUG 14 2015

OPINION COMMITTEE

RQ-0044-KP

FILE # ML-47786-15
I.D. # 47786

Please see the attached request from Rep. Larry Phillips. Please contact me with any questions.

Sara Haenes
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Rep. Larry Phillips
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August 10, 2015

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Opinion Committee,

I am writing to respectfully request an Attorney General opinion regarding an issue that has arisen amongst the Maverick County Hospital District Board of Directors regarding the Vice Chairperson position on the Board.

There are conflicting views regarding the validity of the Vice Chairperson position due to the enabling legislation not providing for this particular position in contrast to the Board's bylaws' authorization of this position. Furthermore, there are conflicting rules and bylaws relating to the succession of an officer after an officer has resigned. Specifically, in this case, the Chairperson has resigned, raising the issue as to whether the Vice Chairperson should automatically become the acting Chairperson, and if so, the length of the Vice Chairperson's term comes in to question as well.

As per Section 402.042 and 402.043 of the Government Code, a committee of the House of the Texas Legislature is authorized to request a formal attorney general opinion. Therefore, as

Chairman of the Homeland Security and Public Safety committee I would like to submit this request to the Opinion Committee of the Office of the Texas Attorney General .

Please find below a supporting brief and relevant background facts regarding the Vice Chairperson position on the Board:

Background

On May 26, 2015, Chairperson Joaquin Rodriguez of the Maverick County Hospital District Board of Directors gave notice of his resignation from the Board. Appendix B (Rodriguez Notice of Resignation). Upon acceptance of Chairperson Rodriguez's resignation at the June 30, 2015 Board of Directors Meeting, a dispute arose among the Board members as to whether the Vice Chairperson should automatically move into the Chairperson position. Appendix C (Board of Directors Minutes June 30, 2015). A director also disputed whether the Vice Chairperson position was valid since the District's enabling legislation, Chapter 1118 of the Texas Special District Code, did not specifically provide for the position of Vice Chairperson, even though the Bylaws authorize such a position. *Id.*

Questions Presented

Accordingly, the Maverick County Hospital District seeks clarification as to the following:

1. Is the Vice Chairperson position valid?
2. If the Vice Chairperson position is valid, did the Vice Chairperson automatically become the acting Chairperson upon Chairperson Rodriguez's resignation?

3. Does the Vice Chairperson continue as the acting Chairperson until the Board appoints a new Chairperson or until the expiration of the resigned Chairperson's term?

Creation of the Maverick County Hospital District

The Maverick County Hospital District ("MCHD" or "the District") was created on July 17, 1965 under the authority of Section 9, Article IX, Texas Constitution. TEX. SPEC. DIST. CODE ANN. § 1118.002 (West) (citing Acts 59th Leg., R.S., Ch. 172, Sec. 1.); Appendix A (August 1, 1965 Meeting Minutes). The first Board of Director's Meeting was held on August 1, 1965, and five directors were appointed by the Commissioner's Court. *Id.* The directors "nominated and elected by acclamation" a President, *Vice President*, Treasurer, and Secretary. *Id.* The Board appears to have maintained a Vice Chairperson position since the District's inception. Appendix A (August 1, 1965 Meeting Minutes).

Laws Applicable to the Maverick County Hospital District

"A hospital district's powers are limited by the authorizing constitutional provision, its enabling act, and provisions of the Health and Safety Code applicable to hospital districts generally." Tex. Att'y Gen. Op. JC-0268 (2000). "As a special district, the District may exercise only those powers that are expressly delegated to it by the legislature, or which exist by clear and unquestioned implication." *Id.* (citing *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940); *Jackson County Hosp. Dist. v. Jackson County Citizens for Continued Hosp. Care*, 669 S.W.2d 147, 154 (Tex. App.—Corpus Christi 1984, no writ)).

The MCHD was created pursuant to Article IX, Section 9 of the Texas Constitution and special enabling legislation now codified in Chapter 1118 of the Texas Special Districts Local Laws Code. TEX. SPEC. DIST. CODE ANN. § 1118.002 (West) (citing Acts 59th Leg., R.S., Ch.

172, Sec. 1.) (“Enabling Act”); *see also* TEX. CONST. art. IX, § 9 (legislature may create hospital district by general or special law). There is no provision of the Texas Health and Safety Code that we are aware of that is applicable and provides guidance on the issues presented.¹

1. Is the Vice Chairperson position valid?

The initial question presented is whether the position of Vice Chairperson on the District’s Board is valid. The District’s enabling legislation provides that the Board shall consist of five directors elected by district voters. See TEX. SPEC. DIST. CODE ANN. § 1118.002(a). The directors serve four-year staggered terms, and an election is to be held each year to elect the appropriate number of directors. *Id.* § 1118.002 (b)-(c). The enabling legislation authorizes the Board to “elect from among its members a president, a secretary, and a treasurer at the first meeting after each directors’ election.” TEX. SPEC. DIST. CODE ANN. § 1118.055. While the Code does not specifically authorize the election of the position of Vice Chairperson, it also does not withhold the Board’s authority to elect such a position. *Id.* § 1118.055.

The Bylaws, on the other hand, specifically authorize the position of Vice Chairperson. Appendix D, Section 5.1, pg. 18 (Bylaws). “[T]he officers of the Hospital District Board of

¹ While it appears Chapter 285, entitled Special Provisions Relating to Hospital Districts, includes some provisions that would be applicable to the MCHD, none are instructive here. See TEX. HEALTH & SAFETY CODE ANN. § 285.081 (providing for staggered terms of the Board of Directors). Likewise, the remaining chapters of the Health and Safety Code pertaining to hospital districts do not appear to be applicable since the MCHD was created via enabling legislation now codified in Chapter 1118 of the Special District Local Laws Code. See TEX. HEALTH & SAFETY CODE CH. 281 (entitled “Hospital Districts in Counties of at Least 190,000”); TEX. HEALTH & SAFETY CODE ANN. § 282.002 (Applying Chapter 282 to hospital districts created by a commissioners court in counties of 75,000 or less); TEX. HEALTH & SAFETY CODE § 283.003 (applying Chapter 283 to hospital districts created under the authority of Article IX, Section 4, of the Texas Constitution); TEX. HEALTH & SAFETY CODE Ch. 286 (entitled, “Hospital Districts Created by Voter Approval”); *see also* Tex. Att’y Gen. Op. JC-0220 (2000) (distinguishing between a hospital district created pursuant to enabling legislation and one created pursuant to Chapter 286); Tex. Att’y Gen. Op. DM-380 (1996) (comparing the enabling legislation creating a hospital district to one created under Chapter 286 “created by voter approval.”).

Directors shall be the Chairperson, *Vice Chairperson*, and the Secretary/Treasurer, and such other officers as the Directors/Trustees shall deem advisable.” *Id.* Further, the Bylaws provide “[t]he Chairperson, *Vice-Chairperson*, and the Secretary/Treasurer shall be elected by majority vote of the Directors/Trustees from the membership of the Board of Directors.” Appendix D, Section 5.1, pg. 18 (Bylaws). Consistent with the authority given in the Bylaws, the Board appears to have maintained a Vice Chairperson position since the District’s inception. Appendix A (August 1, 1965 Meeting Minutes).

Therefore, the question that has arisen is whether the Bylaws can authorize the position of the Vice Chairperson when the enabling legislation provides no corresponding authorization. Pertinent to the analysis is Section 1118.105 of the enabling legislation, which authorizes the Board to adopt “rules for the efficient operation of the district.” *Id.* § 1118.105. The enabling legislation also specifically bestows on the District “the responsibility of undertaking any measure, consistent with Section 9, Article IX, Texas Constitution, and this chapter, that the board determines is necessary to provide hospital and medical care to the district’s needy residents.” *Id.* § 1118.101. Pursuant to this authority, the Board has adopted the Bylaws. Appendix D (Bylaws). The Office of the Texas Attorney General has generally recognized a hospital district’s ability to adopt bylaws, and relied on such bylaws in the absence of a specific code provision. Tex. Att’y Gen. Op. No. GA-0412 (2006) at *1-2.

Accordingly, the District seeks guidance as to whether the Vice Chairperson position is valid when the enabling legislation does not specifically authorize the position, but the Bylaws do.

2. If the Vice Chairperson position is valid, did the Vice Chairperson automatically become the acting Chairperson upon Chairperson Rodriguez's resignation?

It is further disputed among the Board members as to whether the Vice Chairperson, assuming the position is valid, automatically takes over as acting Chairperson upon the Chairperson's resignation. The Bylaws provide, "The resignation of a director is contingent on formal acceptance by the Board and is effective on the date of receipt or at any later date specified in it." Appendix D, Section 3.4, pg.14 (Bylaws); *see also* Appendix D, Section 5.1, pg. 18 (Bylaws) (providing, "The officers shall hold office until their successors are appointed or elected and qualified *except in the event of their earlier death, resignation, or removal.*").

The Bylaws contain a specific provision mandating that the Vice Chairperson "perform the duties of the Chairperson" "[i]n the absence of the Chairperson, or in the event of that individual's inability to or refusal to act." Appendix D, Section 5.5, pg. 18 (Bylaws). Section 5.5 gives the Vice Chairperson all of the powers of the Chairperson when carrying out such duties. *Id.* The Bylaws do not contain any specific provisions relating to the succession of the Chairperson's position following their resignation.

However, the Bylaws specify that "Robert's Rules of Order" shall govern parliamentary procedures of the Board of Directors and its committees. Appendix D (Bylaws). The Office of the Attorney General has specifically recognized a Board's ability to adopt Robert's Rules of Order to govern its meetings, as long as the adopted provisions are consistent with the Texas Open Meetings Act and other laws applicable to the governing body. Tex. Att'y Gen. Op. No. GA-0412 (2006) at *1-2.

According to Robert's Rules of Order, "In the absence of the president, the vice-president serves in his stead." Appendix E (Robert's Rules pg. 457). Further, "In case of the resignation or death of the president, the vice-president (if there is only one) or the first vice-president (if there are more than one) *automatically* becomes president for the unexpired term, unless the bylaws expressly provide otherwise for filling a vacancy in the office of president." Appendix E (Robert's Rules pg. 458).

The Bylaws specifically address how a vacant director position or officer position are to be filled. Appendix D, Section 3.3, pg. 13-14 (Bylaws) (director position "shall be filled by appointment for the unexpired term by a unanimous vote of the remaining Directors/Trustees, though less than a quorum, based on recommendations submitted by a nominating committee appointed by the Board and consisting of two or more Directors/Trustees."); Appendix D, Section 5.3, pg. 18 (Bylaws) (an officer position "shall be filled by a qualified appointment for the unexpired term by a majority vote of the Directors/Trustees."). Likewise, the enabling legislation addresses the process to be followed when there is a vacant director position, but does not provide a corresponding provision applicable when an officer position becomes vacant. *See* TEX. SPEC. DIST. CODE ANN. § 1118.054(a) ("If a vacancy occurs in the office of director, the remaining directors by a unanimous vote shall appoint a director for the unexpired term.").

However, neither the enabling legislation nor the Bylaws provide any further clarification, other than what is addressed in Section 5.5—that in the absence of the Chairperson the Vice Chairperson performs the Chairperson's duties—as to whether the Vice Chairperson automatically takes over as Chairperson upon the Chairperson's resignation. Appendix D, Section 5.5, pg. 18 (Bylaws).

Therefore, the District seeks clarification as to whether it is proper for the Vice Chairperson to assume the position of Chairperson upon the Chairperson's resignation?

3. Does the Vice Chairperson continue as the acting Chairperson until the Board appoints a new Chairperson or until the expiration of the resigned Chairperson's term?

While Robert's Rules of Order indicate the vice-president "*automatically becomes president for the unexpired term,*" this is only the case if there is not an express bylaw provision providing otherwise for filling a vacancy in the office of president. Appendix E (Robert's Rules pg. 458). Here, the Bylaws specifically provide that when a vacancy of an officer position occurs, it "shall be filled *by a qualified appointment* for the unexpired term by a majority vote of the Directors/Trustees." Appendix D, Section 5.3, pg. 18 (Bylaws).

Accordingly, does the Vice Chairperson retain the Chairperson position until the Board appoints a new Chairperson or for the remainder of the Chairperson's unexpired term?

Conclusion

In light of the conflict among the Board members as to the Vice Chairperson's authority to act as Chairperson and for what duration, clarification is needed so that the Board can move forward with conducting its necessary business with regards to the Maverick County Hospital District.

We appreciate the Opinion Committee's attention in these matters and would respectfully request an opinion on the aforementioned questions.