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OPINION COMMITTEE

**OFFICE OF THE COUNTY ATTORNEY
JIM HOGG COUNTY**

Jim Hogg County Courthouse
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Rodolfo V. Gutierrez
County Attorney

FILE # ML-4798616
ID. # 47986

March 16, 2016

RQ-0102-KP

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

Re: Whether Article 49.052, Texas Water Code, disqualifies an employee of the County Attorney's Office from serving as a member of the Board of a Water Control and Improvement District in the same County, when the County Attorney also provides professional services to the Water District.

Dear Committee Members:

I am the County Attorney for Jim Hogg County. Prior to my appointment as County Attorney in October, 2013, I provided professional services to the Jim Hogg County Water Control and Improvement District No. 2 ("Water District"), a District located within the boundaries of Jim Hogg County. Since my appointment as County Attorney, I have continued, and am currently on retainer, to provide professional legal services to the Water District.

I have been requested by the Water District to provide them with an opinion on the application of Article 49.052, Texas Water Code, in regards to a candidate seeking election to the Board of Directors of the Water District in the May, 2016 election. I have advised them that I believe I may have a conflict in providing them with an opinion on this matter, because the candidate in question is an employee of the County Attorney's Office. I have also advised the employee that I can not provide him with an opinion, as well. I am therefore requesting your assistance in this matter.

Article 49.052(a) provides that:

"A person is disqualified from serving as a member of a board of a district that includes less than all the territory in at least one county...if that person... is an employee of ...any... director, manager, engineer, attorney, or other person providing professional services to the district."

Article 59.052(b) provides that "within 60 days after the board determines a relationship or employment exists which constitutes a disqualification under Subsection (a), it shall replace the person serving as a member of the board with a person who would not be disqualified."

Article 59.052 (c) provides that "any person who wilfully occupies an office as a member of a board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) is guilty of a misdemeanor and, on conviction, shall be fined not less than \$100 nor more than \$1,000."

The employee in question is an Investigator with the Jim Hogg County Attorney's Office, and was employed in that capacity prior to my appointment as County Attorney. He continues to be employed by my office and under my supervision. His salary is paid by Jim Hogg County, pursuant to a budget requested by me. He is not employed by me in any matters pertaining to my private law practice, which includes representation of the Water District on a retainer basis.

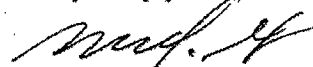
All applicants for election to the Board of Directors of the Water District are currently provided with a copy of Article 49.052, as well as Article 51.072, Texas Water Code, which sets out the qualifications for election to the Water District Board.

The employee in question has submitted an application to be placed on the ballot, which was accepted, and his name will be on the ballot for the May 7, 2016 Water District election.

In the event that he is elected to the Board, and the above employment relationship still exists at that time, will Article 49.052 disqualify him from serving as a member of the Board?

Since the election is less than two months away, I would greatly appreciate an expedited response.

Very truly yours,



Rodolfo V. Gutierrez
County Attorney
Jim Hogg County