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OPINION COMMITTEE

TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES

LYLE LARSON, CHAIR

RQ-0218-KP

April 4, 2018

The Honorable Ken Paxton
Attorney General
Office of the Attorney General
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: *Southwestern Travis County Groundwater Conservation District authorizing legislation and authorities granted therein*

Dear Attorney General Paxton,

The specific questions we submit for your consideration are as follows:

"What legal authorities allow the initial-appointed temporary directors of the Southwestern Travis County Groundwater Conservation District (SWTCGCD) ("District") to cancel the May 2018 election of permanent directors and voter confirmation of the District?"

"Does the affirmative action of the initial-appointed temporary directors to cancel the May 2018 election of permanent directors and voter confirmation of the District either contemporaneously or subsequently terminate all authorities of the initial-appointed temporary directors?"

"May an official authorized to appoint a temporary director, who fulfilled such appointment, withdraw their appointment; the result of withdrawing an appointment nullifying the appointee as a temporary director to the Southwestern Travis County Groundwater Conservation District (SWTCGCD)?"

"What legal authorities do the initial-appointed temporary directors have?"

Background:

The 85th Texas Legislature passed, and the Governor signed into law, Special District Local Laws Code (SDLLC), Chapter 8871, Southwestern Travis County Groundwater Conservation

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District^{1,2}. The appointees, as authorized under SDLLC Chapter 8871, fulfilled the appointments of all seven initial-appointed temporary directors. Section 8871.023 expresses the authorities granted the initial-appointed temporary directors. Section 8871.021(c) states, in full, "Temporary directors serve until the date initial directors are elected at an election held under Section 8871.024." Section 8871.024(a) (Confirmation and Initial Directors' Election) reads, in full: "The temporary directors shall order an election in the district, to be held not later than the uniform election date in May 2018, to confirm the creation of the district and to elect the initial directors."

Additionally, 8871.024(e) and (f) read, in full: "If the district's creation is not confirmed at an election held under Subsection (a), the candidate who receives a majority of the votes cast at that election for each of the seven positions on the board becomes a temporary director of the district. The temporary directors elected under this subsection shall order a subsequent election to be held to confirm the creation of the district and to elect the initial directors not earlier than the uniform election date in May 2020. (f) Temporary directors elected under Subsection (e) serve until: (1) the date initial directors are elected at the subsequent election ordered under Subsection (e) if the creation of the district is confirmed; or (2) the fourth anniversary of the date of the election held under Subsection (a) if the creation of the district is not confirmed."

Finally, on February 27, 2018, Travis County Commissioners Court approved a loan to the District to pay the Travis County Clerk for the District's estimated could range from \$180,000-\$200,000 pro-rata share of the May 2018 election. However, on March 2, 2018, primarily siting costs of the loan to Travis County related to the District's pro-rata share of costs of the May 5, 2018 election, the initial-appointed temporary directors canceled the May 5, 2018 election of initial directors and confirmation of the district. Of note, at no time, during the 85th Session, was any cost to the District of an election of directors or confirmation known to any member of the legislature (see all fiscal notes: "Local Government Impact, No fiscal implication to units of local government is anticipated").³

The clear construction of SDLLC, Chapter 8871, contemplated the following sequence of relevant events after being in effect: appointment of initial-appointed temporary directors; initial-appointed temporary directors ordering the May 2018 election of initial directors and confirmation of the district; irrespective of District confirmation, installation of the candidate who receives a majority of the votes cast at the May 2018 election for each of the seven positions on the board becomes a temporary director of the district, thereby, terminating the service and authorities of initial-appointed temporary directors.

There is no known recorded history of a similar situation occurring in Texas as related to a Groundwater Conservation District and no cases or Attorney General Opinion's directly on point. Therefore, we need your assistance to help clarify the matter.

¹ H.B. 4345, Article 2, effective September 1, 2017

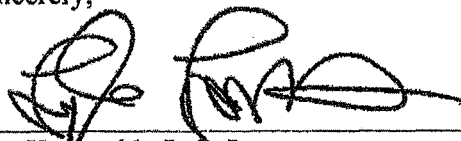
² H.B. 922, as introduced and died on Senate intent calendar, created SDLLC, Chapter 8871, SWTCGCD

³ Memorandum dated January 30, 2018, from Ronald S. Morgan, Jr., Chief Deputy Travis County Clerk, stated, in relevant part, "...estimated cost for the... "SWTCGCD" to participate in the [May 2018] election would be between \$356,000 and \$544,000", or due to entities withdrawing from the May 2018 election, "SWTCGCD's share could range from \$180,000-\$200,000."

I would appreciate your assistance in providing legal guidance by verifying the status of the SWTCGCD and the authorities granted the initial-appointed temporary directors.

Thank you for your consideration of this request and please do not hesitate to contact me or my office if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to be 'Lyle Larson', written over a horizontal line.

The Honorable Lyle Larson
Chairman Committee on Natural Resources