



# CHAMBERS COUNTY AUDITOR

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**I.D.# 48952**

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

RE: Terms of office of the Trinity Bay Conservation District's Directors-To resolve whether the Board of Directors of the District were authorized to change the statutory terms of office from two (2) years to four (4) years without legislative authority.

Dear General Paxton:

Pursuant to Section 402.042(b)(9) of the Texas Government Code, as the County Auditor for Chambers County, Texas, I hereby request an opinion from the Texas Attorney General, on behalf of the residents of the Trinity Bay Conservation District ("District"), to resolve whether District's Board of Directors ("Directors") were authorized to change the statutory terms of office from two (2) years to four (4) years without legislative authority.

The District is a conservation and reclamation district created pursuant to Section 59, of Article XVI, of the Constitution of Texas and Chapter 282, Acts of the 51st Legislature of Texas, Regular Session, 1949 ("enabling legislation"). As set forth in the enabling legislation, the District is governed by five (5) elected directors and provides retail water and sewer service to the residents of the District and is responsible for drainage in the District.

When the District was created, the enabling statute provided for two (2) year terms of office. Specifically, Section 2 states:

The management and control of said District is hereby vested in a Board of Directors, which Board shall be composed of five (5) persons, all of whom shall be residents of and freehold property taxpayers in said District. The members of the first Board of Directors shall be appointed by the Commissioners County of Chambers County as soon as practicable after the passage of this Act. Two (2) of the directors shall be designated to hold office until the second Tuesday in January next following their appointment and three (3) shall be designated to hold office until the second Tuesday in January of the second year next after their appointment, at which times their successors shall be elected and the term of office of all elected directors shall be two (2) years, two (2) being elected one (1) year and three (3) the next in continuing sequence. . . The General Election Laws of Texas shall apply to all elections in the District except where in conflict with this Act. (Emphasis added).

See Acts 1949, 51st R.S.ch. 282, General and Special Laws of Texas (Article 8280-135, Vernon's Texas Civil Statutes. Since its creation, the District's enabling legislation has been amended five (5) times, but no subsequent legislation changed the two (2) year term of office provision.<sup>1</sup>

Nonetheless, on January 22, 1991, the Board of Directors adopted Resolution 91-1 that changed the Directors' terms of office from two (2) years to four (4) years without any statutory authority but based on the hope that legislation was going to be introduced. Specifically, the Resolution stated:

THEREFORE, BE IT RESOLVED THAT the Board of the Directors of the Trinity Bay Conservation District hereby request that their duly elected representatives . . . introduce the appropriate legislation during the 1991 Regular Session of the State Legislature, to amend Sec. 2 of Article 8280-135 to provide for a term of office of all elected officials of four years. (Emphasis added).

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<sup>1</sup> See Acts 1950, 51st 1st C.S.,ch. 45, General and Special Laws of Texas; Acts 1957, 55th R.S.,ch. 144, General and Special Laws of Texas; Acts 1969, 61st R.S.,ch. 362, General and Special Laws of Texas; Acts 1975, 64th R.S.,ch. 249, General and Special Laws of Texas; and Acts 1987, 70th R.S.,ch. 121, General and Special Laws of Texas

See attached as **Exhibit A.**<sup>2</sup> In fact, during the seventy-second (72<sup>nd</sup>) Legislature and special sessions of the seventy-second (72<sup>nd</sup>) Legislature, four (4) bills were introduced to change the terms of office from two (2) years to four (4) years, but all failed to pass.<sup>3</sup> Regardless of the fact that the Board prematurely adopted the Order based on legislation that did not pass, the terms of office were changed to four (4) years and have remained that way ever since.

Most recently, on February 17, 2016, the Board of Directors of the District adopted an Order that changed the date of the directors' election from May 2016 to November 2016.

<sup>4</sup> This order was made with the authority set forth in Section 41.0052(a) & (b) of the Texas Election Code, which provides:

- (a) The governing body of a political subdivision, other than a county or municipal utility district, that holds its general election for officers on a date other than the November uniform election date may, not later than December 31, 2016, change the date on which it holds its general election for officers to the November uniform election date.
- (b) A governing body changing an election date under this section shall adjust the terms of office to conform to the new election date

See Tex. Elec. Code Ann. §§ 41.0052(a) & (b)

The language in this order is as follows:

The transition schedule for the District shall begin with the first election to be held by the District after January 1, 2016. Members previously scheduled to stand for election in May, 2016 will have their terms extended to the new election date of Tuesday, November 8, 2016. Those positions to have appeared on the May, 2016 ballot will appear on the November, 2016 ballot and will be 4-year terms.

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<sup>2</sup> Resolution 91-1 was provided by the District on May 6, 2021 in response to a Public Information Act dated April 14, 2021 request for any resolution adopted by the District's Directors to alter the terms of office from two (2) years to four (4) years. See **Exhibit B.**

<sup>3</sup> See HB 2780, 72nd Regular Session; HB 136, 72nd 1st Called Session; SB 45, 72nd 1st Called Session (companion to HB 136); and SB 53, 72nd 2nd Called Session.

<sup>4</sup> The February 17, 2016 order was also provided in response to the same Public Information Act request April 14, 2021. See **Exhibit C.**

Members previously scheduled to stand for election in May, 2018 will have their terms extended to the first Tuesday after the first Monday in November, 2018. At the November, 2018 election, those positions will be elected for 4-year terms.

After this transition, the Board of Directors of the District will elect its members to their terms of four years in November of each even-numbered years.

*See Exhibit "C".* (Emphasis added). By including the references to "4-year terms", the Board appears to have either: 1) relied on Resolution 91-1; or 2) misinterpreted Section 41.0052(b) by adjusting the terms of office from two (2) years to four (4) years instead of to "adjust the terms of office to conform to the new election date."

In making this request for an opinion, I recognize that Section 49.103(a) of the Texas Water Code states that "[e]xcept as provided by Section 49.102, the members of the board of a district shall serve staggered four-year terms." See Tex. Water Code §49.103(a). Nevertheless, according to Section 49.002 of the Texas Water Code, and as your office recognized in DM-269, Section 49.103(a) of the Water Code is applicable to general law districts, not special law districts such as Trinity Bay Conservation District. *See* Tex. Water Code § 49.002 and Tex. Op. Att'y. Gen. DM-0269 (1993). In addition, as the Attorney General noted, in this same opinion, the District's enabling legislation states in Section 2, "[t]he General Election Laws of Texas shall apply to all elections in the District except where in conflict with this Act." Therefore, Section 49.103(a) is not applicable to the District.

Similarly, in GA-0712, your office has already addressed whether a political subdivision had authority to change the terms of office without authorizing legislation. In GA-0712, the issue was whether the Dallas Independent School District had authority to adopt a resolution that changed its trustees' terms of office from three (3) years to four (4) years outside of the statutory deadline that allowed for any such change. *See* Tex. Op. Att'y. Gen. GA-0712 (2009). The opinion

held that the school district was not authorized to change the length of its member's term of office without statutory authority. *See id.*

Lastly, in 1997, the Texas Legislature adopted Section 41.0053 of the Texas Election Code. *See Acts 1997, 75th R.S., ch. 1219, General and Special Laws of Texas (HB 298).* This section of the code allowed certain types of entities to change the terms of office to four (4) years. *See Tex. Elec. Code § 41.0053(a).* This statute was repealed in 2011 during the eighty-second (82nd) Legislature with the passage of Senate Bill 100. *See SB 100, 82nd Regular Session.* After a review of the former Section 41.0053, conservation and reclamation districts were not a covered entity given authority to change the terms of office. Furthermore, even if the District was a covered entity, no resolution was ever adopted by the District to change the terms of office during the period that the provision of the code was in effect.

In the case of the Trinity Bay Conservation District, at the time of the adoption of the order that changed the Directors' terms of office from two (2) years to four (4) years, there was no statutory authority, and no statutory authority was ever granted. Furthermore, if there was any statutory authority outside of the District's enabling legislation, it does not appear that it applied to the District or the District never took action to utilize this authority.

Given the facts as presented, an opinion is requested on whether the Directors of the Trinity Bay Conservation District had the authority to change the Director's terms of office from statutory allowed two (2) year terms to four (4) year terms without any legislative authority. If not, is the District obligated to return to two (2) year terms at the next regularly scheduled November election.