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June 21, 1984

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Ms. Sharlene Neibauer  
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Election Law Opinion JWF-36

Re: Whether a Water Control and Improvement District directors election held on a date other than that prescribed by statute is void; and, if so, whether a subsequent directors election held on the authorized date but at which no votes were cast resulted in the creation of vacancies in the directors' offices; and, if so, whether the originally appointed temporary directors may call a special election for August 11, 1984, to fill those vacancies, even though the temporary directors did not order an election within fifteen days of the creation of the vacancies.

Dear Ms. Neibauer:

This is in response to your letter of May 2, 1984, regarding director elections for the Travis County Water Control and Improvement District No. 20 ("the WCID").

This official election law opinion is rendered by me as chief election officer of the state in accordance with Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1982-1983).

Your letter presented the following relevant factual background:

1. The district was created and temporary directors appointed on November 23, 1981.
2. The temporary directors called an election to confirm the district's creation and to choose permanent directors, for January 14, 1984, at which election the temporary directors were elected permanent directors.
3. On advice of counsel, another election was called and held on April 7, 1984, to elect permanent directors, pursuant to Tex. Water Code Ann. §51.0731. No votes were cast in this election.
4. The directors now wish to call a special election for August 11, 1984 to fill the directors' positions.

Your letter asked:

1. Whether the absence of votes cast in the April 7, 1984 director election created vacancies in the offices of director.
2. Whether the five temporary directors may order a special election for August 11, 1984 to fill the vacancies even though they did not order such election within fifteen days of the creation of the vacancies.

An election held on an unauthorized date is void. Cartledge v. Wortham, 153 S.W. 297 (Tex. 1913); Tex. Elec. Code Ann. art. 2.01b (Vernon Supp. 1984). Tex. Water Code Ann. §51.0731 (Vernon Supp. 1984) specifies the first Saturday in April as the director election date for the WCID here. Thus, the director election held on January 14, 1984 was void.

Tex. Const. art. XVI, §17 (Vernon 1955) provides that all officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified. Since the January 14 election was void, no successors to the temporary directors were lawfully elected,

and the temporary directors were obliged to continue to perform the directors' duties. They were thus authorized to order the April 7, 1984 director election, pursuant to Tex. Water Code Ann. §51.0731.

Regarding the absence of votes at the April 7 election, Tex. Water Code Ann. § 51.073(b) provides that "[t]he three directors receiving the highest number of votes shall serve as directors for four years and the other two directors shall serve for two years." Therefore, if no candidate received any votes, none was elected a permanent director. The offices thus became vacant. As previously discussed, Tex. Const. art. XVI, §17 requires the temporary directors to continue to perform the directors' duties until the vacancies are filled.

Tex. Water Code §51.082 (Vernon 1972) provides that "if the number of directors is reduced to fewer than three, the vacancies shall be filled by special election ordered by the remaining members of the board." Though in this case there are no "remaining members of the board," Tex. Const. art. XVI §17, supra, indicates that the hold-over temporary directors should perform the duties to be performed by "remaining directors" and should thus call a special election pursuant to Tex. Water Code Ann. §51.082.

Article 2.01b(b) of the Election Code provides that special elections to fill vacancies in office shall be held on one of the four dates specified in article 2.01b(a). Those dates include the second Saturday in August, which in 1984 falls on August 11, the date you have proposed for your WCID's special election. The August 11, 1984 date is, therefore, proper.

Regarding the effect of the directors' failure to call a special election within 15 days after the vacancies occurred, Tex. Water Code Ann. §51.082 provides that "[i]f the director or directors fail to order an election within 15 days after the vacancies occur, any voter or creditor of the district may petition the district judge of any judicial district in which land of the district is located, and the judge may order the election . . . ." (Emphasis supplied.) This language provides for a time after which certain persons other than directors may petition for an election; it does not affect the authority of the directors to call a special election after that time.