



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

August 28, 1964

Mr. Bill Clayton
Texas Legislative Council
P. O. Drawer D
Capitol Station
Austin, Texas

Opinion No. C- 303

Re: Whether it would be constitutional for the Legislature to provide that districts created under Article 7880-1 through 7880-147z1 could authorize terms of office for the members of the governing bodies of the districts to be for more than two years.

Dear Mr. Clayton:

You have requested an opinion from this office concerning:

" . . . whether or not it would be constitutional for the legislature to provide that districts created under V.A.C.S., Article 7880-1 through 7880-147z1 could authorize terms of office for the members of the governing bodies of the districts to be for more than two years."

In this connection you have stated that the:

" . . . House Interim Committee to Study the Protection and Development of Soil and Water Resources has been requested to consider proposing legislation to allow water districts to provide for four-or six-year terms of office for members of the governing bodies of the districts. . . ."

Article XVI, Section 30 of the Constitution of Texas, provides in part that:

"The duration of all offices not fixed by this Constitution shall never exceed two years."
. . ."

Article XVI, Section 30a of the Constitution of Texas, provides that:

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"The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one-third of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law, and the Legislature shall enact suitable laws to give effect to this section."

In the case of San Antonio Independent School District v. State, 173 S.W. 525 (Tex.Civ.App. 1915, error ref.), the Court, in commenting upon whether Article XVI, Section 30a of the Constitution of Texas was applicable to the term of office of members of the board of trustees of an independent school district, stated that:

" . . . The boards enumerated in the Constitution Article XVI, Section 30a are clearly all state boards, or boards of the state . . .

" . . .

"If the Legislature in preparing the constitutional amendment had intended all boards elected or appointed, whether state, county, or municipal, no mention would have been made of certain state boards; but the amendment would have been formulated so as to have included public boards of every description. . . .

" . . .

"We cannot agree to the proposition that the members of the San Antonio school board are state officers or members of a state board, and we conclude that Section 30a has no application to any but state boards. . . ." (Emphasis added)

Subsequent to the decision in San Antonio Independent School District v. State, supra, the Supreme Court of Texas in the case of Lower Colorado River Authority v. McCraw, 125 Tex. 268, 83 S.W.2d 629 (1935), in discussing Article XVI, Section 30a of the Constitution of Texas, stated that:

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" . . . It is settled that this constitutional provision refers to state boards. . . ."

In the case of Banker v. Jefferson County Water Control and Improvement District, 277 S.W.2d 130 (Tex.Civ.App. 1955, error ref., n.r.e.), the Court held in its opinion that:

"The District was organized under and by authority of Section 59, Article 16, of the Constitution, Vernon's Ann.St. and Article 7880-1 to 7880-147z, Vernon's Texas Civil Statutes. . . .

" . . .

"Districts, including Water Control and Improvement Districts, created by or pursuant to statutes enacted under the aforesaid provisions of the Constitution have been consistently recognized by our courts as being political subdivisions of the State which perform governmental functions and which stand upon the same footing as counties and other political subdivisions established by law. Willacy County Water Control and Improvement Dist. No. 1 v. Abendroth, 142 Tex. 320, 177 S.W.2d 936. . . ." (Emphasis added)

The cases of San Antonio Independent School District v. State, supra, and Lower Colorado River Authority v. McCraw, supra, clearly indicate that the provisions of Article XVI, Section 30a of the Constitution of Texas, allowing terms of office in excess of two (2) years, has no application to any but state boards. In turn, the case of Banker v. Jefferson County Water Control and Improvement District, supra, discloses that those districts created pursuant to Article 7880-1 through 7880-147z1 are political subdivisions rather than state boards.

In view of the foregoing, we are of the opinion that the term of office of the members of the board of directors of those districts created pursuant to Article 7880-1 through Article 7880-147z1 is controlled by Article XVI, Section 30 of the Constitution of Texas, and would therefore be limited to a term of two (2) years. Any lengthening of this term of office beyond the period of two (2) years would require a constitutional amendment.

S U M M A R Y

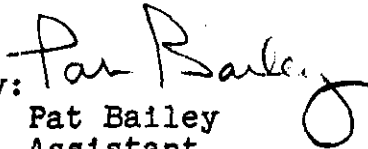
The term of office of the members of the board of directors of a district created pursuant

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to Article 7880-1 through Article 7880-147z1
is controlled by Article XVI, Section 30 of
the Constitution of Texas, and would be limited
to a term of two (2) years.

Very truly yours,

WAGGONER CARR
Attorney General

By: 
Pat Bailey
Assistant

PB:mkh

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
Malcolm Quick
Charles Swanner
James Strock
Paul Phy

APPROVED FOR THE ATTORNEY GENERAL
BY: Stanton Stone