



**THE ATTORNEY GENERAL
OF TEXAS**

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**JIM MATTOX
ATTORNEY GENERAL**

Mr. Ray Williamson
Chairman
Fire Department Emergency Board
P. O. Box 1070
Wharton, Texas 77488

LO-90-44

Dear Mr. Williamson:

You have asked several questions concerning the Fire Department Emergency Board. The board was created by section 417.023 of the Government Code. It is composed of seven members who serve for two-year terms that expire on February 1 of each odd-numbered year. Gov't Code §§ 417.024, 417.025.

You first ask whether the board's composition violates article XVI, section 30a, of the Texas Constitution. That provision provides in relevant part:

The Legislature may provide by law that the members of . . . 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 (Emphasis added.)

Your question is prompted by the fact that your seven-member board is not divisible by three as the above-quoted section appears to require. However, article XVI, section 30a, is not a mandatory provision. It authorizes, but does not require, the legislature to provide for six-year terms for certain state board members. Cowell v. Ayers, 220 S.W. 764 (1920).

The provision must be read in context with another constitutional provision concerning terms of office of statutory officers. Article XVI, section 30, of the constitution provides that the "duration of all offices not fixed by this Constitution shall never exceed two years." That language has appeared in the constitution since its adoption in 1876. Article XVI, section 30a, was added to the constitution in 1912 as an exception to the general rule that

statutory offices could not have terms exceeding two years. The Ayers court described the effect of article XVI, section 30a, as follows:

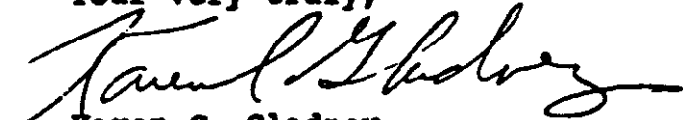
The true and entire effect of section 30a is to enlarge the legislative power over the tenure of certain offices. It was adopted to enable the Legislature to exercise wider discretion over the terms with which it deals. It was never intended to prevent the Legislature from continuing the long-established policy, which called for a renewal of authority at the hands of the people at brief intervals, when, in its wisdom, the Legislature might determine there was no necessity for terms of six years for these boards, with renewals of one-third the membership each two years.

Ayers, supra, at 766.

In creating the Fire Department Emergency Board, the legislature did not choose to create a board with staggered six-year terms as authorized by article XVI, section 30a. Rather, it established a board whose members are statutory officers bound by the tenure constraints of article XVI, section 30. The members terms are limited by section 417.025 of the Government Code to two years in compliance with this constitutional mandate.

To summarize, article XVI, section 30a, of the constitution is inapplicable to the Fire Department Emergency Board. Given our answer to your first question, it is not necessary to consider your other questions.

Your very truly,



Karen C. Gladney
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