

BOARD MINUTES
Joint Meeting with County Commissioners
May 3, 2012

PROOF OF AGENDA POSTING: The Notice/Agenda for the 1:00 pm—May 3, 2012 Joint Meeting with Crockett County Commissioners and the Crockett County Consolidated Common School District Board of Trustees was posted in compliance with the Texas Open Meeting Act.

CALL TO ORDER: The May 3, 2012 Joint Meeting was called to order at 1:00 pm by Board President Ray Don Myers with a quorum of the following members present: Ray Don Myers, Tom Anderson, Dwight Childress, and David McWilliams. Board Members Harvey Sanchez and Roland DeHoyos were not in attendance. Board Vice-President Grizz Medina joined the meeting in progress at 1:05 pm.

Other attendees were Melissa Perner, John Kain, Cynthia Hokit, Chris duBois, Sara Leon, Blake Powell, Jodi Upham, Lou Carson, Eligio Martinez, Fred Deaton, Pleas Childress, Burl Myers, Jeffrey Stuart, and Doris Hood.

WORKSHOP: INTER-GOVERNMENTAL RELATIONS: Board action was not required following the informative discussion defining ‘Common’ school districts and the power to sell or donate property of the district.
See Attachment #A

ADJOURNMENT: A motion by Grizz Medina to adjourn the May 3, 2012 Joint Meeting was seconded by Dwight Childress and passed 5-0. The meeting was adjourned at 2:10 pm.

SIGNED:

President of the Board

ATTEST:

Secretary of the Board

LEGAL MEMORANDUM

To: Chris duBois
From: Blake Powell
Date: May 1, 2012
Re: Common School District Laws

You have requested a summary of the laws on varying subjects concerning consolidated common school districts (“CCSDs”). Common school districts (“CSDs”) were the predominant form of organization for many years in Texas; however, only five common school districts now exist. Because so few CSDs and CCSDs exist, they are underrepresented at the State legislature, no associations adequately exist for them, and many legislative changes impacting public education are silent as to their application to CCSDs. The law governing CSDs was repealed over 15 years ago but continues to govern these districts, which creates potentially conflicting legal issues, such as the issues presented in this memorandum.

What Is Crockett County CCSD’s Organizational Structure?

- (1) Consolidated Common School District. A consolidated common school district is a school district where two or more previous districts have consolidated into one district with the organizational structure of a common school district.

- (2) Common School District. A common school district is a type of school district governed by a local Board of Trustees that is simultaneously subject to the control of county superintendents, county boards of trustees, and/or county commissioners courts.¹ CSDs are typically much smaller than independent school districts in terms of scholastic population, tend to be located in rural locations, and have an organizational structure that varies in several ways from the now prevalent structure of independent school districts (“ISDs”), which are generally free from any control by county officials.²

Section 11.301 of the Education Code provides that school districts or county systems operating under former Chapter 17, 18, 22, 25, 26, 27, or 28 on May 1, 1995, may continue to operate under the applicable chapter as that chapter existed on that date and under state

¹ Hubert, Frank W.R., Jr., *Dismissals of Public-School Employees in Texas—Suggestions for a More Effective Administrative Process*, 44 Tex. L. Rev. 1309 (1966); Hankerson, James A., *Special Governmental Districts*, 35 Tex. L. Rev. 1004 (1957).

² *Id.*

law generally applicable to school districts.³ Most of these chapters, as they formerly existed, are included under the Title 2 Appendix of the current Education Code.⁴ On May 1, 1995, CSDs operated under former Chapter 22 of the Code; thus, those provisions still apply to the Crockett County CCSD.⁵

Because the current law explicitly states that former Chapter 22 of the Education Code still governs CSDs and CCSDs, the governing statute, although repealed, is still in effect only for these existing CSDs and CCSDs. These Chapters were removed from the Education Code due to their obsolete and antiquated nature.⁶ Now, only the savings clause of Education Code § 11.301 allows a CSD or CCSD to exist under the former law.⁷ These changes in the law are not recent, so new changes that occur each year tend to inadvertently affect and further confuse how CSDs and CCSDs should legally operate. However, several governing points are clear from former Chapter 22 of the Education Code:

- (a) CSDs and CCSDs are governed by a board of trustees;⁸
 - (b) CSD and CCSD boards of trustees are under the general supervision of a county governing board as provided in former Chapter 17 of the Education Code;⁹ and
 - (c) The county commissioners court of each county has the power to levy and cause to be collected taxes and issue bonds for the CSDs and CCSDs within the county.¹⁰
- (3) Consolidated School District. A consolidated school district consists of two or more districts of any type within a close geographical range (though not necessarily within the same county) that have consolidated to form one larger district. The term “consolidated” within the name of a current school district indicates that a former consolidation of nearby school districts has occurred. Inclusion of the word “consolidated,” though it may have important community meaning, does not change the legal requirements of a consolidated school district, nor is considered a distinct form of organizational structure. All consolidated

³ Tex. Educ. Code § 11.301.

⁴ Tex. Educ. Code App. § 22.01-.12.

⁵ *See Id.*

⁶ Williams, Ellen, *Education*, 49 SMU L. Rev. 901 (1996).

⁷ *Id.*

⁸ Acts of 1969, 61st Leg., ch. 889, § 1, *repealed by* Acts of 1993, 73 Leg., ch. 347, § 8.33 (2).

⁹ *Id.*

¹⁰ *Id.*

school districts are structurally organized as independent, common, or municipal in nature.

How Do CSD and CCSD Bond Elections Differ from ISDs?

Former Chapter 22 of the Education Code governs both CSDs and CCSDs. Section 22.11 expressly grants the county commissioners court of each county the power to issue bonds. Additionally, Chapter 45 of the Texas Education Code provides that the commissioners court of a county, on behalf of each CSD under its jurisdiction, may issue general obligation bonds and may levy annual ad valorem taxes sufficient to pay the principal and interest on such bonds.¹¹ Chapter 45 further provides that bonds may not be issued unless authorized by a majority of the qualified voters of the district, voting in an election held for that purpose.¹² Under section 45.003, each election must be called by resolution or order of the governing board or commissioners court.¹³

Although CSD bond elections are conducted on behalf of a school, it is the county who orders the elections. Senate Bill 100, passed during the 82nd Texas Legislative session, amended § 41.001 of the Texas Election Code and, among other things, prohibited counties from calling elections on the May Uniform Election Date in even numbered years.¹⁴ Now, as per § 41.001, counties and political subdivisions other than counties have varying election dates. Due to the strange mixture of county and school district governance, these changes in the law pose an election date dilemma for CSDs and CCSDs.

One could argue that CSD and CCSD elections are arguably not a county election. The bonds that are issued are done so on behalf of the school district. Moreover, such bonds are eligible for guarantee by the permanent school fund in the same way as bonds issued by ISDs.¹⁵ However, the Elections Division of the Secretary of State, when analyzing the question of what election dates apply to CSDs and CCSDs, looks to §§ 45.001(a) and 45.003(a) of the Education Code, as well as §§ 32.004 and 52.002(1) of the Election Code. The county commissioners court is the authority that orders bond elections for CSDs and CCSDs.¹⁶ The commissioners court also designates the election day polling places and “any other matters considered necessary or advisable” with respect to such bond elections.¹⁷ In addition, an election ordered by a county authority in which use of the regular county election precincts is not required (such as a bond election for a common

¹¹ Tex. Educ. Code § 45.001 (a) & (b).

¹² *Id.* at § 45.003 (a).

¹³ *Id.*

¹⁴ Tex. Elec. Code § 41.001.

¹⁵ *See* Tex. Educ. Code § 45.052.

¹⁶ Tex. Educ. Code § 45.001(a).

¹⁷ Tex. Educ. Code § 45.003(a).

school district), the authority ordering the election appoints the election judges.¹⁸ The Election Code also states that the county clerk prepares the official ballot in an election ordered by a county authority.¹⁹ In light of these statutes and the amount of county control, the Elections Division's position is that bond elections for CSDs and CCSDs are *not* election[s] held by a political subdivision other than a county.

Therefore, Senate Bill 100 does not allow bond elections for CSDs and CCSDs to be held in May of even-numbered years. CSDs and CCSDs must follow the election-date requirements that its governing county is required by law to follow. Meaning, in terms of bond elections, that the elections must be held the second Saturday in May in an odd-numbered year or the first Tuesday after the first Monday in November.²⁰

What Is the Role of the Commissioners Court in Setting the Tax Rate?

Both former Chapters 20 and 22 and current Chapter 45 of the Education Code expressly address the power to levy, pledge, assess, and collect annual ad valorem taxes.²¹ The process of setting taxes jointly belongs to the CSD or CCSD board of trustees and the commissioners court. The commissioners court shall levy the tax at such a rate within the limit voted as determined by the board or trustees and the county superintendent.²² A CSD or CCSD board and the county superintendent will determine the tax at a rate within the limit voted and the county superintendent will certify the rate to the commissioner's court.²³ Section 22.11(c)(2) states if "no specific rate has been voted, the commissioners court *shall* levy the tax at such a rate within the limit voted as determined by the board of trustees and the county superintendent. . ." ²⁴ If no county superintendent exists, the powers and duties of the county superintendent vests in the governing board of the district; thus, the board of trustees will determine the tax rate and certify it to the commissioners court.²⁵ If a specific ax rate has been voted, then the commissioners court shall levy the tax at that rate.²⁶

¹⁸ Tex. Elec. Code § 32.004.

¹⁹ Tex. Elec. Code § 52.002(1).

²⁰ Tex. Elec. Code § 41.001; *see also* Tex. Educ. Code App. § 22.02(l).

²¹ Tex. Educ Code. App. § 22.11; Acts of 1969, 61st Leg., p. 2895, ch. 889, §1, *repealed* by Acts of 1995, 74th Leg., ch. 260, § 58(1) (former Chapter 20); Tex. Educ. Code 45.001(a)(2).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Tex. Educ. Code App. § 17.96.

²⁶ Tex. Educ. Code App. § 22.11(c).

Additionally, unlike ISDs, the county commissioners court, not the board of trustees, has the power to levy maintenance taxes on behalf of CSDs and CCSDs.²⁷ The county tax collector will collect taxes levied upon the property of CSDs and CCSDs and then pays all the taxes to the county treasurer.²⁸ The county treasurer then credits each CSD or CCSD with the amount of tax funds received belonging to the district.²⁹

Authority to Issue Maintenance Tax Notes

Former Chapter 22 that still governs CSDs and CCSDs grants various express powers and duties to the trustees of the district (as opposed to the commissioners court or a county board). Within these listed powers and duties, trustees of the districts "have the management and control of the public schools, the public school grounds and all other property belonging to the district whether acquired by purchase or lease." This provision expresses a broad delegation to the CCSD board of trustees regarding property management. Additionally, the current law in § 45.108 of the Texas Education Code allows school districts to borrow money for the purpose of paying maintenance expenses through the use of maintenance notes.³⁰ The notes may be payable from and secured by a lien on and pledge of any

²⁷ See Tex. Educ. Code App. § 22.11; Acts of 1969, 61st Leg., p. 2895, ch. 889, §1, *repealed by* Acts of 1995, 74th Leg., ch. 260, § 58(1) (former Chapter 20).

²⁸ Tex. Educ. Code App. § 22.11(g).

²⁹ *Id.* at 22.11(h).

³⁰ Tex. Educ. Code § 45.108. See below:

BORROWING MONEY FOR CURRENT MAINTENANCE EXPENSES.

(a) Independent or consolidated school districts may borrow money for the purpose of paying maintenance expenses and may evidence those loans with negotiable notes, except that the loans may not at any time exceed 75 percent of the previous year's income. The notes may be payable from and secured by a lien on and pledge of any available funds of the district, including proceeds of a maintenance tax. The term "maintenance expenses" or "maintenance expenditures" as used in this section means any lawful expenditure of the school district other than payment of principal of and interest on bonds. The term includes all costs incurred in connection with environmental cleanup and asbestos cleanup and removal programs implemented by school districts or in connection with the maintenance, repair, rehabilitation, or replacement of heating, air conditioning, water, sanitation, roofing, flooring, electric, or other building systems of existing school properties. Notes issued pursuant to this section may be issued to mature in not more than 20 years from their date. Notes issued for a term longer than one year must be treated as "debt" as defined in Section 26.012(7), Tax Code.

(b) Notes may be issued under this section only after a budget has been adopted for the current school year.

(c) Notes issued under this section must be authorized by resolution adopted by a majority vote of the board of trustees, signed by the president or vice president and attested by the secretary of the board.

(d) A note issued under this section may contain a certification that it is issued pursuant to and in compliance with this section and pursuant to a resolution adopted by the board of trustees. The certification is sufficient evidence that the note is a valid obligation of the district.

available funds of the district, including proceeds of a maintenance tax.³¹ Notes issued under this section only require authorization through a resolution adopted by a majority vote of the board of trustees.³²

The question that arises is whether a CSD or CCSD school board may issue a maintenance tax note without prior authority from the county commissioners court. Yes, a maintenance tax note may be issued by the board of trustees without prior approval of the county commissioner's court. The combined governance of both repealed and current law presents difficulties (but not impossibilities) in determining the correct answer to who holds the power to issue maintenance tax notes and whether or not the power is shared between the board and the commissioners court.

- (1) Historical Understanding. The first step in analyzing the lawful procedure for issuing a maintenance tax note is to understand the history behind county governance of CSDs and CCSDs. Various county officials have played the role of supervisors and overseers of the CSDs and CCSDs. County superintendents, county boards of school trustees, and county school boards are examples of such types of officials. These official capacities have been abolished and have become obsolete over time, so the county commissioners courts now supervise and oversee remaining CSDs and CCSDs. Next, the specific grants of powers and duties to each governing body must be analyzed.
- (2) Former Chapter 22. This Chapter begins by granting the control, management, and supervision of CSDs and CCSDs to both the school board of trustees and a county governing board as provided in Chapter 17 of the Education Code entitled: "County Administration."³³ Chapter 22 explains that a CCSD "is under the immediate control and management of a board of seven trustees, who function under the provisions of this chapter but who are under the general supervision of a county governing board as provided in Chapter 17 of this code."³⁴ While this grant of general supervision seems to allow approval and overview of all school board decisions, the language of both Chapter 17 and Chapter 22 state otherwise. Section 22.08 expressly grants CSD and CCSD trustees the power to:
 - (a) contract and be contracted with for the general good of the school district;
 - (b) manage and control the public school, school grounds, and all other property belonging to the district by purchase or lease;

³¹ *Id.*

³² *Id.*

³³ See Tex. Educ. Code App. 22.01.

³⁴ *Id.* at 22.01(b).

- (c) determine how many schools shall be maintained in the district, where the schools are to be located, and when the schools shall be opened or closed; and
- (d) several other express powers and duties not applicable to issuing maintenance tax notes.

Once identified, the specific duties and powers of the board of trustees must then be compared with the section governing county administration.

- (3) Former Chapter 17. This Chapter begins by granting the general management and control of public free schools and high schools in each county to a board of county school trustees, *unless otherwise provided by law*.³⁵ The management and control of the county board of trustees is expressly limited to other law, which would include Chapter 22 grants of power and duties to the CSD and CCSD trustees. In addition to this limitation, § 17.96 transfers certain powers and duties upon the abolishment of following offices: county superintendent, county boards of school trustees, and county school boards.³⁶ Powers and duties relating to the approval of or recommendations concerning the operation of a school district, as well as the actual administration or operation of schools in the county vest in the governing boards of the districts.³⁷ In this same section, the commissioners courts are only expressly conferred powers and duties relating to the annexation of school districts, detachment of territory from school districts, and alteration of boundaries. With a clear understanding of the CSD and CCSD trustees' powers and duties, the next step is to assess and determine where a maintenance expense falls in these delegations of power.
- (4) Maintenance Expense Defined. The term "maintenance expense" or "maintenance expenditure" means any lawful expenditure of the school district other than payment of principal of and interest on bonds. The term includes all costs incurred in connection with environmental cleanup and asbestos cleanup and removal programs implemented by school districts or in connection with the maintenance, repair, rehabilitation, or replacement of heating, air conditioning, water, sanitation, roofing, flooring, electric, or other building systems of existing school properties.³⁸ Maintenance and repair decisions and expenditures fall within the above powers and duties of a CSD or CCSD board of trustees. With this knowledge, the board of trustees may proceed without county approval in issuing a maintenance tax note as prescribed by current law. The procedural legality of any particular transaction is subject to Attorney General approval.

³⁵ Tex. Educ. Code App. § 17.01.

³⁶ *Id.* at § 17.96.

³⁷ *Id.*

³⁸ Tex. Educ. code § 45.108.

- (5) Attorney General Certification. The Crockett County CCSD Board of Trustees, for its August 1, 2011 Maintenance Tax Note conducted such a test of procedural legality. By and through the authority described in § 45.108 of the Education Code, the Board passed a resolution issuing a maintenance tax note. The Board then submitted its procedures to the Attorney General's Office for approval. By letter dated August 23, 2011, the Attorney General certified and approved the Maintenance Tax Note. The letter states that after examination of the law, certified proceedings, and other papers deemed necessary, the note in question was "issued in accordance with law and is a valid and binding obligation of the Issuer."

The powers and duties conveyed to CSD and CCSD trustees by law allow the school board to issue a maintenance tax note without prior authority from the county commissioners court. Final approval from the Attorney General's Office confirms the legality of this action.

Who Owns and Possesses the Power to Sell the Property of the District?

This question is answerable by general property laws. The entity that holds title to the land is the owner of the property. The trustees of a CSD or CCSD have express authority to hold and "sell any property belonging to the school district, provided that the proceeds of the sale must be used to purchase necessary grounds or to build or repair school buildings or be placed to the credit of the local school maintenance fund of the district."³⁹ If the county holds title to the school property (lands granted by the State to the county for educational purposes), then it may "sell or dispose of school lands in such manner as may be prescribed by the commissioners court of the county."⁴⁰

Can CSDs and CCSDs Donate or Sell a Building to Another Political Subdivision?

In regard to the sale or donation of a building, Chapter 272 applies expressly to political subdivisions, including both counties and school districts.⁴¹ ⁴² A county or school district may donate or sell for less than fair market value a designated parcel of land or an interest in real property to another political subdivision *if* it meets the following requirements:

³⁹ Tex. Educ. Code App. § 22.10.

⁴⁰ Tex. Educ. Code App. § 17.81-.82; *see also* Tex. Educ. Code App. § 17.22.

⁴¹ *See generally* Loc. Gov't Code §§ 272.001-.005.

⁴² Loc. Gov't Code § 272.001(l).

- (1) the land or interest will be used by the political subdivision to which it is donated or sold in carrying out a purpose that benefits the public interest of the donating or selling political subdivision;
- (2) the donation or sale of the land or interest is made under terms that effect and maintain the public purpose for which the donation or sale is made; and
- (3) the title and right to possession of the land or interest revert to the donating or selling political subdivision if the acquiring political subdivision ceases to use the land or interest in carrying out the public purpose.⁴³

Are Donations from Oil and Gas Companies Allowed or Prohibited?

Former Chapter 22 directly grants CSD and CCSD trustees the power to “receive any gift, grant donation, or devise made for the use of the public schools of the district.” Although the board is statutorily authorized to accept donations, other factors require analysis prior to acceptance of a donation made by oil and gas companies.

Historically, oil and gas companies made donations to schools accompanied by tax abatement agreements from the school district. The Property Redevelopment and Tax Abatement Act no longer allows school districts to enter into these types of tax abatement agreements; therefore, a donation from an oil and gas company today would be just that—a gratuitous donation.⁴⁴ The school district may not provide consideration for such a donation as it once could. Because of the historical implications of donations made by companies dealing in oil and gas, it is advised that districts fully document and disclose that the donation is purely of a gratuitous nature before accepting it. In addition, other options may be explored regarding a mutually beneficial relationship among companies, land owners, and the school district.

Chapter 313 Agreements stem from the Texas Economic Development Act. This Act authorizes school districts to limit the appraised value of property in the district for the purposes of district-imposed maintenance and operation property taxes in accordance with the procedures and subject to the limitations described in the Act. These agreements apply generally to alternative-fund resource industries (e.g., manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, and nuclear electric power generation).⁴⁵ The Tax Code provides that “the owner of qualified

⁴³ *Id.*

⁴⁴ Tex. Tax Code § 312.002(f).

⁴⁵ 34 Tex. Admin. Code § 9.1051(16).

property” is authorized to apply for the limitation on the appraised value “of the person’s qualified property.” The Act allows school districts to attract new taxable property and create jobs by offering tax incentives such as a tax credit and an 8-year limitation on the appraised value of a property.⁴⁶

The Subchapters within Chapter 313 contain varying tax agreements, depending on the school district and the purpose for the agreement. Subchapter B governs limitations on appraised value of certain property used to create jobs. Subchapter C governs limitations on appraised value of certain property in certain rural school districts. Subchapter D governs school tax credits. Section 13.007 states that Subchapters B, C, and D expire on December 31, 2014. Finally, Subchapter E governs the availability of tax credits after the Program expires.⁴⁷

How Can CSDs and CCSDs Become Independent School Districts?

Any CSD or CCSD may incorporate for school purposes and become an independent school district.⁴⁸ Section 11.301 of the current Education Code expressly allows a CSD or CCSD to convert to an ISD in the manner provided by former Subchapter F, Chapter 19 of the Education Code.⁴⁹ First, conversion from a CSD or CCSD into an ISD must be initiated by a petition requesting an election on the question. Second, an election on the matter must be held on a uniform election date as required by law.⁵⁰ At the same time the county judge orders the incorporation election, he or she must also order an election to be held for the selection of a board of seven trustees.⁵¹ Specific petition and ballot wording must be complied with.⁵²

If a majority of votes are cast in favor of incorporation of the district, the county judge must then enter an order incorporating the school district into the minutes of the commissioners court.⁵³ The county clerk will then record a certified copy of the order in the appropriate county records.⁵⁴ From this point, the school district is deemed incorporated for free school purposes only and is vested with all the rights, powers, and privileges conferred and imposed by law on ISDs. The county judge presents a certificate of election to the seven trustee candidates who received the greatest number of votes cast. Once the certificate has been issued and

⁴⁶ Tex. Tax Code Ch. 313; *Window on State Government*, Texas Comptroller of Public Accounts, <http://www.window.state.tx.us/taxinfo/proptax/hb1200/> (“Texas Comptroller”); Tex. Att’y Gen. Op. No. GA-0665 (September 16, 2008).

⁴⁷ Tex. Tax Code Ch. 313.

⁴⁸ Tex. Educ. Code § 11.301(b); Tex. Educ. Code App. § 19.121.

⁴⁹ *Id.*

⁵⁰ Tex. Educ. Code App. § 19.124(e).

⁵¹ *Id.* at § 19.123.

⁵² *Id.* at §§ 19.122-.123.

⁵³ *Id.* at § 19.124.

⁵⁴ *Id.*

the appropriate oath is taken, the trustees are qualified and will immediately undertake their duties.⁵⁵ Once the Commissioner of Education receives notice from the newly formed ISD, the district will receive its share of the school fund.⁵⁶ Title to all property of the CSD or CCSD vests in the ISD, and the ISD assumes and is liable for the outstanding indebtedness of the prior CSD or CCSD.⁵⁷

We hope this information is helpful to you as you continue to serve the needs of the Crockett County CCSD. Please do not hesitate to contact us if you have any questions.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at § 19.125.

