

## DUTIES AND RESPONSIBILITIES OF DIRECTORS

### 2003 AWBD MID-WINTER CONFERENCE

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This is a summary outline of the duties and responsibilities of directors of municipal utility districts and other special utility districts, along with a review of the functions and powers of such districts. Specific statutory provisions and requirements for districts and directors are set forth in Chapters 49 and 54 of the Texas Water Code, as amended; however, other statutory provisions applicable to directors and districts are also referenced.

#### I. Statutory Powers of Districts

- A. A district is a governmental entity and political subdivision of the State of Texas created under applicable statutory provisions and the Texas Constitution.
- B. Types of Districts.
  - 1. General law districts – created by the Texas Commission on Environmental Quality (the "TCEQ") (formerly, the Texas Natural Resource Conservation Commission), County Commissioners Court or Governing Board of a City; these districts are provided powers, duties and responsibilities under specific provisions of the Water Code, and are either created for general purposes or for specific purposes.
  - 2. Special law districts – created by legislation to perform one function or a limited purpose and often combine several functions performed by limited purpose general law districts (*i.e.*, water supply districts, conservation and reclamation districts).
- C. Statutory purposes – may include water supply, wastewater treatment, stormwater control, irrigation, navigation, fire fighting, solid waste management, and development of parks/recreational facilities.
- D. Districts have full power, authority, rights and duties to accomplish purposes for which they are created.
- E. Powers are numerous – include, but not limited to, ability to enter contracts, construct water, sewer and drainage facilities, adopt rules and regulations for water/sewer system, impose fees/charges, acquire real and personal property, levy taxes, issue debt, annex land, develop/maintain parks and recreational facilities, employ peace officers, and eminent domain powers.

#### II. Financial Duties and Responsibilities

- A. Board of Directors (the "Board") is **ultimate** responsible party for all district funds.
  - 1. Must adopt annual budget for designated fiscal year.

2. Must designate one or more depositories for district funds; to extent funds exceed FDIC insurance, collateral must be pledged to secure such funds (Chapter 2257, Government Code).
  3. District funds only disbursed by check, draft, or other instrument signed by at least three (3) directors or by general manager, bookkeeper, or other district employee if authorized by Board resolution.
  4. Director may sign own reimbursement check; one Board member may not stop payment on a check that a majority of the Board has signed.
  5. Board may authorize transfer of funds by federal reserve wire to a district account or another account – resolution no longer required.
  6. TCEQ Water District Accounting Manual provides minimum standards for maintaining district accounting system.
- B. All district funds and investments governed by Public Funds Investment Act (Chapter 2256, Government Code).
1. Must adopt investment policy/procedures.
  2. District must designate an investment officer to oversee investment of district funds; may be employee or a director.
  3. Annual review of investment policy required.
  4. Investment officer must attend investment training.
- C. Annual audit of funds and accounts required and must be filed within 120 days of close of fiscal year.
- D. Consultants who handle district funds must be covered by a public employee blanket bond.
- E. District may impose and enforce fees, charges and deposits for all services provided by the district.

### III. Directors – General Information

- A. Qualifications – must be at least 18 years old, a resident citizen of the State and either own land subject to taxation in the district or be a qualified voter in the district.
- B. Disqualifications – may not be related to developer, engineer, attorney, etc. of the district; may not be employee of developer in the district or employee of any director, manager, engineer, attorney, etc. of the district; may not be a developer in the district; may not be a party to a contract with the district, excluding contracts for purchase of public services.
1. Disqualified directors must be replaced within 60 days; continuation as a disqualified director is a misdemeanor.

2. Removal of Board member – by unanimous vote of Board and only if director has missed one-half or more of regular meetings during prior 12 months; removed director may appeal to TCEQ by filing a petition within 30 days of receiving notice of Board action.
- C. Vacancies – must be filled within 60 days; if not filled by 61st day, 10% of voters may petition to fill position; after 90 days, TCEQ may fill the vacancy; director may vote on his/her successor and continues to serve until successor is fully qualified to serve.
  - D. Administrative requirements – must file sworn statement of qualifications prior to performing duties, must take oath of office and execute \$10,000 fidelity bond; oath filed with Secretary of State.
  - E. Fees of office – \$150 per day for each day a director actually spends performing duties as a director, not to exceed \$6,000 per year (Board must adopt resolution regarding fees of office).
  - F. Expense reimbursement – for actual expenses reasonably and necessarily incurred while engaging in activities on behalf of district and in accordance with expense reimbursement policy adopted by the Board.
    1. Must file verified statement (notarized) reflecting days of service and description of duties performed.
    2. Receipts for expenses should be included with verified statement.
- IV. Ethics, Conflicts of Interest and Policies/Procedures
- A. Directors subject to conflict of interest statutes – Chapter 171, Local Government Code.
    1. Must reject any benefit for past official actions in favor of another person.
    2. Must reject any job, favor or other benefit that might tend or is intended to impair/influence official conduct or independence.
    3. May not engage in any business activity that may lead to revealing confidential information received through official position.
    4. Must file affidavit if director has substantial interest in a business entity which would be affected by a Board decision.
      - a. State nature/extent of interest before any vote or decision.
      - b. Interested director may not discuss or vote on the matter.
    5. Must file affidavit regarding interest in any property being acquired with public funds.

B. Board members and consultants subject to ethics laws governing elected officials.

1. Nepotism prohibited – may not approve or vote for appointment of a relative of any Board member to a position paid for with public funds (Chapter 573, Government Code).
2. Bribery – may not ask for, accept or agree to accept something of value as consideration for a decision or exercise of discretion as a public official; includes past, present and future actions or decisions (Chapter 36, Penal Code).
3. May not accept a gift as a public official; exceptions include acceptance of food, lodging, transportation or entertainment (Chapter 36, Penal Code).
4. Abuse of office, includes:
  - a. Exercise of official powers of a director without authority, failure to perform a required duty or improperly taking/using district property if such actions taken with intent to obtain a personal benefit.
  - b. Misuse of information received in advance of the public as a result of official capacity as a director; includes reliance on such information to speculate or acquire economic advantage for self or others.
5. Official oppression – may not take advantage of official capacity to either mistreat someone or impede someone's rights.

C. Liability of directors.

1. Not held personally liable for torts such as slander, fraud, negligence and civil rights violations if acting in good faith within scope of public duties.
2. Actions taken beyond director's authority, in bad faith or with malice, subject director to personal liability.
3. Directors/officers liability insurance is available and is recommended.

D. Board must adopt numerous policies/procedures, including, but not limited to, a code of ethics for directors, officers and employees handling district funds and investments, policy relating to travel/expense reimbursements, investment policy and policy regarding fees of office.

E. The Board is responsible for the management of **all** the affairs of the district.

V. Elections/Terms of Office

- A. All district elections governed by Texas Election Code and applicable Water Code provisions.
- B. Directors serve staggered four (4) year terms.
- C. Elections held either in February or May of each even-numbered year.

- D. If voters fail to elect one or more directors, current Board members holding the positions not filled are deemed to be re-elected to serve an additional term of office.

## VI. Meetings of the Board

- A. All Board meetings subject to and **must** be conducted in compliance with Open Meetings Act (Chapter 551, Government Code).

- 1. Act does not give right to speak at Board meetings – only right to observe.
- 2. Board may establish policies to govern public comment; recommended if members of the public frequently attend the Board meeting.
- 3. Meeting minutes or tape recording of each open meeting is required.
  - a. Must state subject of each deliberation.
  - b. Must reflect each vote, order, decision or other action taken by the Board.
- 4. Social or informal occasions where a quorum of the Board is present is not subject to the Act only if the Board members do not engage in discussion or consideration of public business or public policy.

- B. Notice of meetings.

- 1. Must be written notice stating date, time and location of meeting.
- 2. Posted at least 72 hours prior to meeting time (exception for emergency meetings).
- 3. Must be posted at the administrative office of the district and with County Clerk in county where district is located.
- 4. If no meeting place in district, must also post notice at public place within district designated by written Board resolution.
- 5. Should remove posted meeting notice if meeting canceled.
- 6. Final action taken on an item not included on the meeting agenda is voidable and subject to invalidation by a court; may be cured by ratifying actions at next meeting where notice is properly given; however, action only valid from the date of the properly called meeting; ratification **does not** cure the criminal violation of the Open Meetings Act.
- 7. May only provide information in response to inquiries made by a director or member of the public on matters not included on agenda; may not vote on a matter not included on agenda.
- 8. Quorum of a governmental body attending a meeting of a legislative committee or agency not considered a meeting if deliberation by members consists only of publicly testifying, commenting or responding to a question by a member of the legislative committee or agency.

9. Conducting a meeting by conference call is not permitted unless an emergency or public necessity exists and the convening of a quorum at one location is difficult or impossible.
10. Consultations with attorney are allowed by conference call, videoconference call or communications over the Internet during an open meeting or private consultation with the attorney in a closed session; does not apply if attorney is an employee of the governmental body.
11. Violation of Open Meetings Act – "knowingly" conspires to circumvent the Act; it is a misdemeanor; affirmative defense available if Board member relies on the legal opinion of the district's attorney; punishment may include a fine of not less than \$100 or more than \$500, confinement in county jail for not less than one (1) month or more than six (6) months or both a fine and confinement.

C. Emergency meetings.

1. Only with existence of imminent threat to public health/safety or unforeseeable situations requiring immediate action.
2. Notice must be posted at least two (2) hours prior to meeting and must state reason for emergency or urgent public necessity.

D. Executive/closed session meetings.

1. Meeting may be closed to the public under limited circumstances, including contract negotiations, consideration of personnel matters (not paid consultants), real property transactions, consultation with attorney regarding litigation, security deployment and matters to which attorney/client privilege applies; presence of a third party in the executive session may nullify attorney/client privilege.
2. Must first convene in open session and announce executive session is to be held and cite statutory provision(s) that authorize the executive session.
3. No final action, decision, or vote may be taken during executive session; must reconvene in open session to take action.
4. Certified agenda/minutes of the closed session must be prepared and retained.
5. May not disclose to the public the minutes (certified agenda) or tape recording of a closed meeting; violation is a Class B misdemeanor.

VII. Office/Meeting Locations

- A. Office – Board may designate one or more offices inside or outside the district to conduct business of district and maintain district records.

- B. Meeting location – Board may designate one or more places inside or outside the district for conducting meetings of the Board.
  - 1. Meeting place may be private residence or business as designated by written resolution, but must be open to public.
  - 2. Notice of designation or change of meeting place located outside the district must be published in newspaper and filed with the TCEQ.
- C. Compliance with Americans with Disabilities Act (the "ADA") – meeting facilities must be physically accessible to persons with disabilities; includes being certain that communications with disabled persons are effective and providing auxiliary aids/services when necessary.

#### VIII. District Records

- A. Records of district are subject to provisions of Public Information Act (frequently referred to as the "Open Records Act") and Local Government Records Act (Chapter 552, Government Code; Chapters 201-205, Local Government Code).
- B. Must permit public inspection and access to district records, including, but not limited to, reports, audits, contracts, voting records, tax records, etc.
- C. Specific procedures to respond to requests for information must be complied with under Public Information Act.
- D. May be helpful to have a written policy regarding process/procedures for handling Public Information Act requests.

#### IX. Consultants

- A. District may not engage certain professional services based on competitive bids (Professional Services Procurement Act, Chapter 2254, Government Code; Section 49.278, Water Code).
  - 1. Includes public accountants, professional engineers, attorneys, financial advisors and other professional consultants.
  - 2. Selection of professional services must be based on qualifications and experience, **not** price or fee.

#### **NOTE**

The information reflected in this outline was prepared from the TCEQ publications entitled "A Handbook for Board Members of Water Districts in Texas," Fourth Edition, June 1996 and "Texas Water Districts - A General Guide," March 2000, and the provisions of the Texas Water Code, but should not be exclusively relied upon. Please consult with your district's attorney for guidance regarding the application of this information to your specific district. Each district is responsible for maintaining knowledge and familiarity with the rules, regulations, and statutes applicable to their district.