

MEMORANDUM

To: Jack Elrod

From: Rolando L. Rios 

Date: October 21, 2008

Re: Procedures for adopting 4 year terms -- Second Memo

Question: Currently, the DISD elect's nine trustees to three year terms of office staggered with three trustees elected every year. Section 11.065 of the Education Code allows the DISD to adopt terms of office not to exceed four years. If the DISD decides adopt four year terms of office as allowed by Section 11.065, can existing terms of office be extended during the transition to four year terms of office?

Answer: Yes. The plain language of Section 11.065 of the Texas Education Code specifically allows the DISD to "adopt rules necessary to govern the terms, election, and residency requirements of members of the board". Without being able to extend the existing terms of office, Section 11.065 would be partially invalidated.

LAW: Section 11.065 was adopted by the legislature with the DISD¹ in mind; Section 11.065(c) allows the DISD to adopt terms of office not to exceed four years and Section 11.065(d) allows the DISD to "adopt rules necessary to govern the terms, election, and residence requirements". The question raised is whether or not the "adopt rules necessary" language would include the power to extend terms of office of the existing trustees for the transition to the four year terms of office.

In 2006 the legislature passed Section 11.0581 of the Texas Education Code requiring some school districts to conduct joint elections and adopt four year terms of office. In adopting four year terms, Section 11.059 (c) required 4-3 stagger with elections

held biennially. To comply with 11.0581 many school districts had to extend existing terms of office during the transition; however, Subsection (d) of § 11.0581 specifically allows trustees to “adjust the terms of office of its members to conform to the new election date.” No such language exists in Section 11.065. Indeed, the language in Section 11.065 is broader because it allows trustee to “adopt rules necessary” for the transition.

A court construes a statute, “first, by looking to the plain and common meaning of the statute’s words.” *Argonaut Ins. Co. v Baker*, 87 S.W. 3d 526, 529(Tex. 2002). “Words and phrases shall be read in context and construed according to the rules of grammar and common usage.” Tex. Gov’t Code Ann. §311.011(a)(Vernon 2005). Further, “in ascertaining a term’s meaning, courts look primarily to how that term is used throughout the statute as a whole. Statutory terms should be interpreted consistently in every part of an act. *Tex. Dep’t of Transp. V. Needham*, 82 S.W. 3d 314, 318 (Tex. 2002). Indeed, given the plain language of 11.065 and how the transition has been conducted by other school districts under 11.0581, DISD would have the power to extend terms of office as it implements four year terms of office. Without the power to extend the terms, the option of adopting four year terms of office would be ineffective. In enacting a statute, it is presumed that the entire statute is intended to be effective, *Int’l Serv. Ins Co. v. Jackson*, 335 S.W.2d 420, 424 (Tex. Civ. App – Austin 1960, writ ref’d n.r.e.); se Tex Gov’t Code Ann. § 311.021(2)(Vernon 2005)

Moreover, Section 11.059 of the Education Code deals with the issue of terms of office. Section 11.065 (a) specifically excludes Sections 11.059 (a) and (b) from applying

¹ This assumption is based on Sen. West sponsoring the legislation and Subsections (a) (1) and (2) of

to the DISD; however, 11.059 (c) applies to the DISD and requires that four year terms use a 5-4 biennial stagger²:

(c) Elections for trustees with four-year terms shall be held biennially. The terms of one-half of the trustees, or as near to one-half as possible, expire every two years.

To accomplish the transition suggested and comply with the 5-4 biennial stagger the DISD would have to extend terms of office for the transition.

To accomplish the transition, should the board decide to do so, I would suggest the following language as part of the resolution to be adopted:

Suggested Language³:

The District's current election schedule is as follows:

DISTRICTS 1, 3, & 9: The current terms expires. in May 2009, with subsequent elections to take place in 2012, 2015, and so forth,

DISTRICTS 4, 5,& 7: The current term expires in May 2010, with subsequent elections to take place in 2013, 2016, and so forth.

DISTRICTS 2, 6, & 8: The current term expires in May 2011, with subsequent elections to take place in 2014, 2017, and so forth.

The new election schedule will be as follows: beginning in May 2010, the District will have biennial elections and trustees will be elected to four (4) year terms of office according to the following transition schedule:

DISTRICTS 1, 3, & 9: Extend the current term of office by one year so the next election will occur in May 2010 for four year terms of office with succeeding elections to be conducted in 2014, 2018, and so on,

DISTRICTS 4, 5,& 7: The May 2010 election will be held as scheduled; two of these districts will elected a trustee for full four year terms and will thereafter

Section 11.065. Attachment A is the bill analysis for S.B. 688.

² A 5-4 stagger means that five trustees run one year and two years later the other four trustees run.

³ Similar language was used by other school districts and the voting change was approved by the Department of Justice.

follow the election cycle set forth for Districts 1,3,and 9 in the preceding paragraph. The remaining district will elect a trustee for a two year term and will thereafter follow the election cycle set forth for Districts 2, 6, & 8 in the succeeding paragraph,

DISTRICTS 2, 6, & 8: Extend the current term by one year so the next election will occur in May 2012 for four year terms of office with succeeding election to be conducted in 2016, 2020 and so on.

The transition schedule to the new 5-4 election cycle would be:

- District 1 May 2010 (extend term 1 year)
- District 2 May 2012 (extend term 1 year)
- District 3 May 2010 (extend term 1 year)
- District 4 May 2010 (*for either a 4 or 2 year term*)
- District 5 May 2010 (*for either a 4 or 2 year term*)
- District 6 May 2012 (extend term 1 year)
- District 7 May 2010 (*for either a 4 or 2 year term*)
- District 8 May 2012 (extend term 1 year)
- District 9 May 2010 (extend term 1 year)

(Districts 4, 5 and 7 will draw lots to see which one will run for a two year term and which two will run for four year terms in 2010. Obviously, they do not have to draw lots if one of the incumbents volunteers to run for a two year term.)

This proposal would eliminate the concern about extending a term of office for two years and possible conflicting with 11.065 (c) of the Education Code. That Section states: *(c) A trustee of a school district described by (a) may not serve a term that exceeds four years.* This process extends the terms of office by one year for six of the incumbent board members but all are within the limit of four year terms as set out in 11.056(c). This transition schedule is suggested as a method of

“adopt[ing] rules necessary to govern the terms, election, and residency requirements of members of the board” as permitted in 11.056 (d).