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## MEMORANDUM

**TO:** Cyndi T. Krier  
Bexar County Judge

**FROM:** Steven C. Hilbig  
Criminal District Attorney  
Bexar County, Texas

**RE:** Appointments to Metropolitan Planning Organization  
D.A. Opinion No. 95-003

**DATE:** February 10, 1995

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You have asked for my opinion regarding the following questions:

- a. What is the status of the County's current appointees to the Steering Committee of the Metropolitan Planning Organization (MPO)?
- b. Do appointees serve at the will of the appointing authority?
- c. Could the District Attorney's Office clarify the terms of MPO appointees?

Judge Krier and Commissioner Elizondo currently serve on the MPO board in a holdover status. Since a qualification for appointment to the Steering Committee is that the appointee be either the Public Works Director for the County or a member of the Commissioners Court, Helen Dutmer is no longer qualified to serve on the MPO. Judge

Krier and Commissioner Paul Elizondo are qualified for reappointment, but are constitutionally limited to a two year term of office.

There is no definitive answer to the question of whether the appointees serve at will. However, based upon the Texas Constitution and prior Attorney General opinions, it appears that appointees to the MPO are public officers and therefore are not "at will" appointees.

There does not appear to be a statutorily mandated term for appointees to the MPO. Furthermore, the agreement establishing the MPO does not purport to set a term of office. Thus, it is the opinion of this office that Commissioners Court may set the term of office so long as the term does not exceed the constitutional limit of two years.

#### **A. BACKGROUND**

The following factual assumptions are based upon information provided by Commissioners Court staff:

Judge Krier was appointed to the Steering Committee of the MPO on December 16, 1992. Commissioner Paul Elizondo was appointed to the Steering Committee of the MPO on March 4, 1987 and is currently the Chairman. Former Commissioner Helen Dutmer was appointed to the Steering Committee of the MPO on August 21, 1991.

On January 15, 1992, Bexar County entered into an agreement with the State Department of Transportation, the City of San Antonio, and the Metropolitan Transit Authority with regard to the Metropolitan Planning Organization (the "MPO Agreement"). The MPO Agreement provides that the Steering Committee includes three

members of Bexar County Commissioners Court and the Director of Public Works for Bexar County. The MPO Agreement does not provide for specific terms for members of the Steering Committee, but simply states: "each agency shall designate its representative to the Transportation Steering Committee and when necessary fill vacancies among its members on the Committee." See MPO Agreement at pg. 2.

Under the plain language of the MPO Agreement, former Commissioner Helen Dutmer is no longer qualified to serve on the Steering Committee. In order to be in compliance with the MPO Agreement, Commissioners Court must designate another Commissioner to fill her place on the Committee.

**B. DISCUSSION OF STATUS OF CURRENT APPOINTEES—PUBLIC OFFICERS OR "AT WILL"**

The Texas Constitution limits the term of all public offices to no more than two years unless otherwise designated by the Constitution. Tex. Const. Art. XVI, § 30. There is no statutory or constitutional provision setting the terms of members of the MPO Steering Committee. The MPO Agreement is also silent on this issue. Therefore, if Steering Committee members qualify as "public officers," their terms cannot exceed two years. Texas Courts have addressed this issue:

The determining factor which distinguishes a public officer from an employee is whether a sovereign function of government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others.

Aldine I.S.D. v. Standley, 280 S.W.2d 578, 583 (Tex. 1955); Dunbar v. Brazoria Co., 224 S.W.2d 738, 740-741 (Tex. Civ. App. – Galveston 1949, writ ref'd).

In the instant case, the MPO Agreement states that the desire of the parties was to form a one-committee structure composed "principally of elected officials of general purpose local government which have responsibility for project implementation within the Study area." See MPO Agreement at p. 1. Furthermore, the MPO Agreement specifies that a majority of the Commissioners Court should sit as voting members of the Steering Committee. It is clear from the MPO Agreement's language that the Steering Committee members are intended to exercise the functions of government for the benefit of the public through the transportation planning process and by obtaining federal funds to assist in implementing these transportation programs for the benefit of the entire area.

Neither the statute nor the agreement make it clear as to whether the Steering Committee members act independently of the control of others. The MPO Agreement provides that Steering Committee duties include obtaining certification of the transportation plan by complying with Federal law. Federal law provides for certain elements that must be included in the transportation planning process, and for the provision of funding for programs that are certified as complying with federal law. See 23 CFR § 450; 49 CFR § 613; Intermodal Surface Transportation Efficiency Act of 1991. These laws, however, do not dictate any actions to be taken by the Steering Committee members. Instead, they set forth items to be considered by the MPO and standards for receiving federal funding. The actions of the Steering Committee remain largely independent of the control of others. Thus, it is the opinion of this office that the

Steering Committee members of the MPO are public officers within the meaning of the Texas Constitution.

Since we have concluded that the appointees to the MPO are public officers under the constitution, they do not serve at the will of Commissioners Court. The question of whether appointees to boards serve at the pleasure of Commissioners Court has been addressed by the Attorney General. In Opinion No. DM-114, the Attorney General addressed the specific question of whether appointees to the Comal County Water Oriented Recreation District, Fire Prevention Districts, and Emergency Services District could be removed at the will of Commissioners Court. The Attorney General stated that county officers are subject to removal only for causes defined by law, and by a jury trial, pursuant to Texas Constitution Art. V, § 24.

### C. TERMS OF THE MPO APPOINTEES

Texas Constitution Article 16, Section 30, states that, with few exceptions, the duration of a public office shall never exceed two years. While the Constitution sets the outer limit of the term length, it does not set a "lower" limit or minimum term. Commissioners Court may therefore set a term in any length up to the maximum of two years. Cf. Bonner v. Belsterling, 138 S.W. 571 (Tex. 1911). Unless the Commissioners Court specifies the length of the term of appointment, it is reasonable to presume that the term should extend for two years. In the case of the MPO there are no fixed terms; therefore, the terms for appointees begin on the date designated by the Commissioners Court.

## CONCLUSION

Former Commissioner Helen Dutmer is no longer eligible to serve on the MPO Steering Committee because she is no longer a member of Commissioners Court; her position may be filled at any time. Judge Krier and Commissioner Paul Elizondo remain eligible to serve on the Steering Committee, but they have both served their two year terms and are currently in holdover status. They may now be replaced or reappointed.

MPO Steering Committee members are public officers and county officers who may serve two year terms. Those terms may be set by Commissioners Court. Since committee members are "public officers," they may only be removed before the end of their term for cause in accordance with the Texas Constitution.

ES/lh

CC: Precinct One Commissioner Robert Tejeda  
Precinct Two Commissioner Paul Elizondo  
Precinct Three Commissioner Walter Bielstein  
Precinct Four Commissioner Mike Novak