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MEMORANDUM

D.A. Opinion No. 95-037

TO: The Honorable Steven C. Hilbig
Criminal District Attorney
Bexar, County

FROM: Edward Schweningen
Assistant Criminal District Attorney
Chief--Civil Section

RE: Terms of Appointments to Bexar County Boards and Commissions

DATE: June 6, 1995

Judge Krier has asked that this office review all existing boards and commissions listed in the Bexar County Boards and Commissions Handbook to assist in verifying the correct terms for appointees.¹

We have already provided legal opinions in response to questions pertaining to the following boards and commissions which contain legal principles applicable to analyzing the terms for other similar appointments:

Bexar County Civil Service Commission (D.A. Opinion. 94-020)
Bexar County Sheriff's Civil Service Commission (Id.)
VIA Board (D.A. Opinion 94-018)
Center for Health Care Services (Id.)
Alamo Area Council of Governments (D.A. Opinion 95-01)
Metropolitan Planning Organization (D.A. Opinion No. 95-003)

¹ The following boards are either inactive or no longer exist, and they are accordingly omitted from discussion:

Library Advisory Committee
Salado Creek Foundation
Water Steering Committee

While we will not duplicate the discussions in the individual opinions already issued, it will be helpful to frame the issues concerning the remaining boards and commissions in terms of the status of the appointees as either serving at will, or as public officials.

A. AT WILL APPOINTEES

Appointees who serve at will may be removed or replaced at the Commissioners Court's discretion, and their terms may be changed at any time. See Dorenfield v. State, 73 S.W.2d 83 (Tex. 1934). For example, based upon our review of the information provided to us by Commissioners Court Administration, appointees to the following boards and commissions serve at will:

- ADA Committee
- Adult System Citizens Advisory Committee
- AIDS/HIV Commission
- Austin-San Antonio Corridor Council Executive Committee
- Bootstrap/Family Self Sufficiency Committee
- Child Welfare Board
- Community Action Advisory Board
- Disadvantaged Business Enterprise Advisory Committee
- Dispute Resolution Advisory Board
- Dome Advisory Committee
- Juvenile System Citizens' Advisory Committee
- Juvenile Workgroup
- Parks Advisory Board
- River Corridor Advisory and Executive Committee
- 201 Area Wastewater Advisory Committee

The above at-will appointees do not have terms defined by statute and serve completely at the discretion of Commissioners Court.²

² Appointees to the Bexar County Historical Commission and the 911 Board of Managers have terms prescribed by statute, but serve at will because they are either statutorily defined as at will appointments, or their statutory duties do not include a largely independent exercise of a sovereign function of government.

B. PUBLIC OFFICIALS

The remaining appointees are considered to be public officials and may only be removed for cause. Tex. Const. art. V, § 24; Loc. Gov. Code § 87.012 (Vernon 1988). The determining factor which distinguishes an appointee as a public official is:

[W]hether 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). See also Dunbar v. Brazoria Co., 224 S.W.2d 738, 740-741 (Tex.Civ.App. -- Galveston 1949, writ ref'd.); D.A. Opinion 95-003 at p. 3.

The above definition summarizes the essential elements of public office: the office-holder's authority to exercise governmental power for the benefit of the public and his independence from the control of other governmental entities. See Tex. Att'y Gen. Op. No. DM-114 (1992).

1. Constitutional Limitations on Terms

Two boards are affected by Constitutional limitations on their statutorily prescribed terms of office:

VIA Transit Authority (VIA)
Coliseum Advisory Board (CAB)

As previously addressed in D.A. Opinion 95-003, the Texas Constitution limits the terms for "offices" of appointees who are considered "public officials" to two years unless otherwise designated by the Constitution.³ Tex. Const. art. XVI, § 30. Therefore, if an appointee is a "public official," his term cannot exceed two years.

Generally, the enabling statute of a board or commission controls when defining the terms of appointments. However, when a statutory term conflicts with the Constitutional limitation of two year terms for public officers, then the Constitution controls. The Attorney General's office determined that Texas Revised Civil Statutes Annotated, art. 1118x, § 6(B)e, which specifies four year terms for metropolitan transit authority board appointees, conflicts with the two year limitation under the Texas Constitution. In such a situation, appointees, including the VIA Board members, are limited to two year terms, despite statutory language which may provide for longer terms. See Tex. Att'y Gen. Letter Op. 88-66 (1988).

³ No board or commission to which Commissioners Court makes appointments of public officials, has terms which the Constitution designates to be in excess of two years.

In the past, Commissioners Court has assumed the validity of CAB's statutorily prescribed six year term for board members. However, CAB presents another situation where the statutory terms exceed the Constitutional limitation of two years. While the applicable statute provides for six year terms for CAB members, it is our opinion that CAB members are "public officials" for purposes of applying the two year limitation. See generally D.A. Op. 95-003.

2. Terms Set by Agreement

a. Agreement among cooperating governmental entities

A statute may be silent regarding terms, but cooperating governmental entities who make board appointments may agree with one another in defining terms. In that case, the contractual language of their agreement controls. Such boards and commissions include:

Alamo Area Council of Governments
Center for Health Care Services
Metropolitan Advisory Board of Health

To the extent that any contract between governmental entities specifies terms greater than two years, the Constitutional limit controls.

b. Determination by internal governance of corporation

The following boards act as boards of directors of non-profit corporations created by the County or the City:

Health Facilities Development Corporation
Housing Finance Corporation
Keep San Antonio Beautiful

These boards' terms are determined by the corporations' bylaws, which can be modified or changed in accordance with the bylaws, and are not determined by statute.

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3. Statutory Terms

a. Boards with statutorily fixed terms

i. Where the statute fixes both term length and date of commencement

The statutory language provides specific dates for the fixed terms of appointees of the following boards and commissions:

- Salary Grievance Committee
(second Monday of January of each year)
- Edwards Aquifer Authority
(June 1st of odd numbered years)
- Alamo Workforce Development Corporation
(date of recertification of PIC board by Governor)

ii. Where the statute fixes term length and implies date of commencement

The applicable statute for each of the boards and commissions listed below provides that when a vacancy occurs, an appointment shall be made to complete the unexpired term, indicating a legislative intent to fix terms:

- Sheriff's Civil Service Commission
- Bexar County Civil Service Commission
- VIA Transit Authority
- CAB

Although there is no definitive Texas law on point, the date of initial appointment likely creates the anniversary date for all subsequent terms. See State v. Amos, 133 So. 623 (Fla. 1931); State v. Dixon, 4 So.2d 591 (La. Ct. App. 1941); People v. Reinberg, 105 N.E. 715 (Ill. 1914). This would not be true, however, if there were no authority to make the initial appointment. For example, there is a question of whether the County had the authority to make its initial Place 2 appointment on November 29, 1979, to the VIA board, because the right of the County to make that appointment may be tied to federal census figures which were issued on April 1, 1980. The Place 2 appointment, if based upon the 1980 census, was premature; therefore, the correct anniversary date for subsequent terms of the Place 2 position is likely to be the earliest date after the official 1980 census was issued when the appointment could have been legally made.

iii. Where statute fixes term length and is silent as to commencement

Generally, where the commencement date of the appointment is neither expressly nor impliedly fixed by statute, the term of office begins on the day of appointment. See Spears v. Davis, 398 S.W.2d 921, 926 (Tex. 1966). However, it appears that the Court may also determine a prospective beginning date for the term. See D.A. Opinion 94-018.

The following boards and commissions are included in this situation:

Bexar County Hospital District Board of Managers (after)
Bexar County Hospital Authority
Bexar County Housing Authority

b. Boards without statutorily fixed terms

Where the statute is completely silent with regard to terms, Commissioners Court may set a term for any length up to a 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. From our review, the following boards and commissions should be included in that situation:

Bail Bond Board
Bexar County Industrial Development Corporation
Metropolitan Planning Organization
San Antonio Metropolitan Area HIV Health Services Planning Council
Veterans' Land Committee

C. CLOSING

If there are any remaining questions with regard to boards and commissions which cannot be answered after applying the foregoing information, this office remains available for assistance.