



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2014

The Honorable Andrew Lucas  
Somervell County Attorney  
Post Office Box 1335  
Glen Rose, Texas 76043

**Via E-Mail**

Re: Determination of terms of office for county hospital district board members after a tie vote in the initial election (RQ-1213-GA)

Dear Mr. Lucas:

We have received your request for an attorney general opinion dated August 13, 2014 and have designated it as Request No. 1213-GA. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180<sup>th</sup> day after the date that an opinion request is received, unless before that date the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE ANN. § 402.042(c)(2) (West 2013). Because you have asked for an expedited response to your request, I must advise you that our office does not have a procedure for expediting a particular request or considering a request in advance of others that were received before it. We received your request on August 15, 2014, setting a due date for your opinion of February 11, 2015. We will make every effort to respond by that date, or before, if possible. Please be advised, however, that we cannot guarantee that the opinion will issue before the December 2014 filing deadline.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefs if they care to do so. If you are aware of other interested parties, please forward this request for briefing to them or let us know, so that we may notify them as soon as possible. We ask that the briefs be submitted by September 8, 2014 to ensure that this office will have adequate time to review and consider arguments relevant to the request from all interested parties. Briefs may be submitted by e-mail to [opinion.committee@texasattorneygeneral.gov](mailto:opinion.committee@texasattorneygeneral.gov). Please note that briefs and other correspondence are subject to the Public Information Act.

Sincerely,

Virginia K. Hoelscher  
Chair, Opinion Committee

VKH/mma

Attachment: Request No. 1213-GA

cc: The Honorable Nandita Berry, Texas Secretary of State  
Mr. Wroe Jackson, General Counsel, Office of the Secretary of State  
Dr. David L. Lakey, Commissioner, Texas Department of State Health Services  
Ms. Lisa Hernandez, General Counsel, Texas Department of State Health Services  
Ms. Dawn Burton, Assistant General Counsel, Texas Department of State Health  
Services  
Mr. Marc Connelly, Deputy General Counsel, Texas Department of State Health Services  
Mr. David Pearson, President/CEO, Texas Organization of Rural and Community  
Hospitals  
Mr. Darrell Davila, Governor's Appointment Director, Governor's Office

RECEIVED

AUG 15 2014

OPINION COMMITTEE



Andrew Lucas

Somervell County Attorney

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FILE # ML-47624-14  
I.D. # 47624

August 13, 2014

**RQ-1213-GA**

*Via Certified Mail/Return Receipt Requested*

Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**Re: Somervell County Hospital District Election  
Request for Opinion – Terms of Office for Board of Directors following Tie Vote**

Dear Sir or Madam:

This request for opinion is made pursuant to §402.042 of the Texas Government Code and involves the resolution of a tie vote in the initial election of the Somervell County Hospital District's Board of Directors and the terms of office for the elected officers.

*STATEMENT OF FACTS*

The Somervell County Hospital District ("District") was created by election in May, 2013 and organized under the provisions of Chapter 286 of the Texas Health and Safety Code. The petition to create the district was filed under terms and conditions pursuant to §286.021, et seq., of the Health and Safety Code. *The petition is attached as Exhibit "A" and incorporated herein.* The temporary directors of the District were named in the petition and appointed to serve by the Somervell County Commissioners Court until such time as an election could be held pursuant to §§286.041-286.050 of the Health and Safety Code. The election was held in May, 2014 with eighteen (18) candidates vying for seven (7) seats as permanent directors. The directors would be elected at large, with the top seven candidates receiving the most votes to serve as directors. Seven individuals did receive the highest number of votes. However, the fourth and fifth place finishers received the same number of votes. This created a conflict in who would serve two-year terms and who would serve one-year terms. §286.042(b)(2) dictates the number of directors equal to a majority of the directors who receive the highest number of votes at the initial election serve for a term of two years, and, (b)(3) the remaining directors serve for a term of one year. The petition to create the district called for the four directors who receive the most votes to serve for two years and the remaining three directors to serve for one year.

*QUESTION PRESENTED*

Do the fourth and fifth place finishers equal a "majority" under §286.042(b)(2) and each serve two year terms leaving two directors (the sixth and seventh place finishers) to serve one year

terms or does the tie vote have to be resolved pursuant to §2.002 of the Texas Election Code to ensure that four directors serve two year terms and three directors serve one year terms?

*ARGUMENT*

Those who have argued that the fourth and fifth place finishers who received the same number of votes should each serve two year terms (leaving a 5/2 split in the election cycle) believe that the majority wording in §286.042(b)(2) moves both the fourth and fifth place finishers into the majority as intended by the Health and Safety Code provisions. Therefore, resolving the tie vote is unnecessary. The 4/3 split dictated in the petition to create the district was impermissible under §286.022. Further, §2.002 of the Election Code does not apply because the election did not require a plurality vote.

Those who have argued that the tie vote must be resolved under §2.002 of the Election Code believe that both the petition to create the district which dictates a 4/3 split and the "majority" wording in §286.042(b) each require that four directors serve two year terms and three directors serve one year terms. Only four directors could make a majority under the clear reading of both the petition and the intent of the Health and Safety Code provisions. To find otherwise would mean that all seven could serve two year terms had the fourth, fifth, sixth, and seventh place finishers all received the same number of votes. §286.022 does dictate the method by which the permanent directors will be elected, including how elected (at large) and how the terms of office will be divided (4/3 majority).

*CONCLUSION*

We respectfully request your opinion to help resolve these disputed interpretations. Although we understand that your office has 180 days to issue an opinion, we are hopeful to have your answer in time for the May, 2015 election cycle. The filing deadline is likely to fall in early December, 2014. It is my understanding that the district's board of directors is ready to cast lots to resolve the tie should your opinion determine they should do so. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Lucas". The signature is fluid and cursive, with a large initial "A" and a long, sweeping tail.

Andrew Lucas  
Somervell County Attorney