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M E M O R A N D U M

TO: Flying L Public Utility District Board Members
Steve Childers – General Manager

FROM: Ty Embrey

DATE: November 18, 2021

RE: Issues Related to Texas Open Meetings Act for FLPUD

EXECUTIVE SUMMARY

The purpose of this memo is to inform the Flying L Public Utility District (“PUD”) Board of Directors (the “Board”) and senior management for the PUD (General Manager Steve Childers) regarding the legal issues that were raised by members of the public at the November 8, 2021 PUD Board Meeting. Many of the issues raised by the public involved the provisions of the Texas Open Meetings Act (TOMA).

DISCUSSION OF ISSUES

Issue #1 – Did the sale of water line-flushing water by the PUD to a 3rd party company need to be approved by the PUD Board at a PUD Board Meeting?

Answer = No.

Explanation = A 3rd party company approached the General Manager for the PUD, Steve Childers, and made a request to buy water. Mr. Childers identified a source of non-potable water generated by the PUD and sold the non-potable water to the 3rd party company for \$500.00. The sale of the non-potable water was within Mr. Childers’s authority in his role as the General Manager of the District and within the authority granted to Mr. Childers by the PUD Board.

The Bylaws for the PUD state in Article IV, Section 1 that “[t]he General Manager is the chief executive officer of the District and as such shall have full authority to manage the affairs of the District.”

Issue #2 – Did PUD Board Members or Mr. Childers violate the legal requirements of TOMA when Mr. Childers discussed the possible sale of the extra water generated by the water line-flushing process to a 3rd party company with two PUD Board Members?

Answer = No.

Explanation = The chapter of the Texas Special Districts Local Laws Code, Chapter 8177, that codifies the enabling act for the PUD states in Section 8177.101 that the PUD “has the rights, powers, privileges, and functions provided by general law applicable to a municipal utility district, including Chapters 49 and 54, Water Code.”

Section 49.053 of the Texas Water Code provides as follows:

“A majority of the membership of the board constitutes a quorum for any meeting, and a concurrence of a majority of the entire membership of the board is sufficient for transacting any business of the district.”

In addition, the Bylaws for the PUD state in Article II, Section 2 that “a quorum of the Board consists of a majority of the number of authorized positions on the Board of Directors.”

Based on the language of Section 49.053 of the Water Code and the PUD’s Bylaws, a quorum of the PUD’s Board would consist of three (3) Board Members due to the fact that there are five (5) PUD Board Member positions. Section 8177.051 of the Texas Special Purpose Districts Local Laws Code (PUD’s enabling act) states that “[t]he board of directors is composed of five elected directors.” Mr. Childers discussed the possible sale of the extra water with only (2) PUD Board Members which is less than a quorum.

A reference at the November 8 PUD Board Meeting by a member of the public to Section 551.143 of TOMA which is designed to prevent decisions being made by a quorum of a governmental entity’s board through personal communications. This situation is known as a “walking quorum.”

Section 551.143 of TOMA is not applicable to the sale of extra water situation or any PUD Board Member because personal communications did not occur among a quorum of the PUD Board Members. Section 551.143(a) provides as follows:

- (a) A member of a governmental body commits an offense if the member:
 - (1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental

body in which the members engaging in the individual communications constitute fewer than a quorum of members **but the members engaging in the series of communications constitute a quorum of members**; and

- (2) knew at the time the member engaged in the communication that the series of communications:
 - (A) involved or would involve a quorum; and
 - (B) would constitute a deliberation once a quorum of members engaged in the series of communications.

Issue #3 – Did PUD Board Members or staff violate any legal requirements under TOMA in regards to communications between two PUD Board Members and staff relating to the Water Service Application submitted to the PUD by Dollar General Representatives prior to any action by the PUD Board?

Answer = No.

Explanation = The Water Service Application submitted by the Dollar General Representatives was approved by the PUD Board at the October PUD Board Meeting which was properly noticed under TOMA. Mr. Childers communicated with two (2) PUD Board Members regarding the Water Service Application which is less than a quorum of the PUD Board as explained in the Explanation to Issue #2.

Issue #4 – Did the PUD Board violate any legal requirements under TOMA or Texas law in regards to the accommodations provided to the large number of members of the public who attended the November 9 PUD Board Meeting?

Answer = No.

Explanation = TOMA does not have any provisions that address the accommodations and facilities that a governmental entity, such as the PUD, has to provide the public and, particularly, a large number of members of the public. A governmental entity is required to make its meetings accessible to persons with disabilities. As provided in the Texas Open Meetings Act Laws Made Easy publication published by the Texas Municipal League, “Title II of the Americans with Disabilities Act (ADA) provides that activities of state and local governing bodies, including meetings, are subject to the ADA. In most cases, such a requirement means that the facility holding the meeting must be physically accessible to individuals with disabilities. Governmental entities may ask individuals with disabilities to

provide the entity with reasonable notice on any accommodations they may need to attend the meeting. Also, entities must be ready to provide an accessible meeting site and provide alternative forms of communications that address the needs of individuals with disabilities. This may involve providing sign language interpreters, readers, or large print or Braille documents upon request.”