

Legal Q&A

By Christy Drake-Adams, TML Legal Counsel

Must a school district apply for a specific use permit required under the city's zoning ordinance?

The attorney general opined that so long as a city's specific use permit procedures do not work to totally exclude a school district facility and are reasonably related to the protection of the health, safety, and welfare of the community, the school district must comply with the permit procedures and conditions. Tex. Att'y Gen. Op. No. JM-514 (1986).

May a home rule city enforce land development regulations against a school district for the purpose of aesthetics and the maintenance of property values?

The attorney general opined that a home rule city may enforce its reasonable land development regulations and ordinances against a school district for the purpose of aesthetics and the maintenance of property values. Tex. Att'y Gen. Op. No. GA-0697 (2009).

May a city impose impact fees on a school district?

Yes, but only if the school district agrees to the payment of the fees. Local Government Code Section 395.022(b) provides that "[a] school district is not required to pay impact fees . . . unless the board of trustees of the district consents to the payment of the fees by entering a contract with the [city] that imposes the fees." The attorney general has discussed this statute, explaining that a school district "is not required to pay [an impact] fee in the absence of an agreement to do so." Tex. Att'y Gen. Op. No. GA-0850 (2011); *see also* Tex. Att'y Gen. Op. No. GA-0984 (2013) (concluding that a junior college district is a "school district" for purposes of Section 395.022(b)).

Some questioned whether Education Code Section 11.168 prohibited a school district from entering into such an agreement. *Id.* In 2011 (H.B. 628), the legislature amended Section 11.168 to expressly provide that a school is not prohibited from entering into an agreement for the design, construction, or renovation of improvements to real property not owned or leased by the district if the improvement benefits the district's property. "Benefits" are defined to include the design, construction, or renovation of highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements that serve or benefit the district's property. TEX. EDUC. CODE § 11.168(b). With this amendment, there is no longer any doubt that a school district may enter into an agreement to pay impact fees.

Does state law exempt school districts from paying drainage fees?

No, school districts are not generally exempt from drainage fees by state law. The Municipal Drainage Utility Systems Act authorizes the imposition of municipal drainage fees. TEX. LOC. GOV'T CODE §§ 552.041-.054. State law exempts state agencies and public institutions of higher education from the requirement to pay drainage fees. *Id.* § 580.003(a). And in 2011, a negotiated

bill exempted the El Paso Independent School District (El Paso ISD) from the payment of drainage fees. *Id.* § 552.053(e)(2). Thus, with the exception of the El Paso ISD, school districts are not exempt from drainage fees under state law.

Is a city authorized to regulate the sale of alcohol near a school?

With some exceptions, a city may enact regulations prohibiting the sale of alcohol by a business located within: (1) 300 feet of a public or private school; (2) 1,000 feet of a private school, if the city council receives a request from the school board; and (3) 1,000 feet of a public school, if the city council receives a petition from a school board of a district principally located in a city with a population of 900,000 or more. TEX. ALCO. BEV. CODE § 109.33; Tex. Att’y Gen. Op. Nos. GA-0962 (2012), GA-0942 (2012).

Is an open-enrollment charter school subject to a city’s zoning ordinance?

“An open-enrollment charter school is part of the public school system of this state.” TEX. EDUC. CODE § 12.105. And they are treated as public schools for many purposes. Accordingly, under Education Code Section 12.103, “an open-enrollment charter school is subject to federal and state laws and rules governing public schools and to municipal zoning ordinances governing public schools.” However, Section 12.103 goes on to provide that “a campus of an open-enrollment charter school located in whole or in part in a municipality with a population of 20,000 or less is not subject to a municipal zoning ordinance governing public schools.”

Does a city have to install signs at the entrance of each school crossing zone to alert drivers that the use of a cell phone is prohibited in the school zone?

Maybe. State law bans the use of wireless communication devices in school zones unless the driver is using a hands-free device or the vehicle is completely stopped. TEX. TRANSP. CODE § 545.425. If a city enforces this ban, a sign must be posted at the entrance to each school crossing zone in the city. *Id.* § 545.425(b-1). However, legislation passed in 2011 (House Bill 1899) exempts a city from this requirement if: (a) the city prohibits the use of a cell phone while operating a motor vehicle throughout the city; (b) the city posts signs at each point at which a highway enters the city stating that an operator is prohibited from using a cell phone while operating a motor vehicle in the city and that the operator is subject to a fine for a violation; and (c) the city posts the same message as described in (b) on any dynamic message sign operated by the city on a highway in the city. *Id.* § 545.425(b-2). In sum, if your city does not have a city-wide ban on using a wireless device while driving and wants to enforce the state law ban, the city must install the signs at the school crossing zone.

If any of the signage will be located on a state-maintained road, the city should first contact its Texas Department of Transportation (TxDOT) district office. Contact information for the 25 TxDOT districts is available at http://www.txdot.gov/local_information/.

Is a school district allowed to pay a civil red-light camera fine imposed by a city when a district employee, driving a district-owned vehicle, runs a red light?

Yes. The attorney general opined that so long as a school district is liable for the civil penalty under state law and city ordinance, its payment of the penalty would not contravene article III, Sections 51 and 52(a) of the Texas Constitution, which generally prohibit the gratuitous payment of public funds to a private person. Tex. Att’y Gen. Op. No. GA-0747 (2009).

Is a peace officer authorized to issue traffic citations on school district property?

Yes. Section 37.102(b) of the Texas Education Code provides that “[a] law or ordinance regulating traffic on a public highway or street applies to the operation of a vehicle on school property, except as modified by [Subchapter D, Chapter 37 of the Education Code].” An ordinance regulating traffic may be modified by the board of trustees of a school district under its authority to adopt rules, “including rules providing for the operation and parking of vehicles on school property.” TEX. EDUC. CODE § 37.102(a).

Must cities hold joint elections with school districts?

No. Section 11.0581 of the Education Code requires that an election for the trustees of an independent school district be held jointly on the same date as: (1) the city council election of a city located in the school district; (2) the general election for state and county officers (November of even-numbered years); (3) the election for the board members of a hospital district in certain independent school districts; or (4) the election for board members of a public junior college district located in the school district. Thus, while the school district *must* find an appropriate entity with which to have a joint election, a city is not required by state law to hold a joint election with the school district.

May a councilmember simultaneously serve as a school board trustee?

If the boundaries of the city and school district overlap, a councilmember may not also serve as a school board trustee. *Thomas v. Abernathy Cnty. Line Indep. Sch. Dist.*, 290 S.W. 152, 153 (Tex. Comm’n App. 1927, judgment adopted); Tex. Att’y Gen. Op. Nos. GA-0808 (2010) (dealing with a mayor in a Type A general law city), JM-634 (1987). When the boundaries of the city and school district do not overlap, this type of dual service may or may not be prohibited, depending on the facts. Tex. Att’y Gen. Op. No. JM-634 (1987) (explaining that generally whether or not two positions are legally incompatible is a fact question). More information about holding dual positions with a city and school district is available in an attorney general publication titled *2012 Texas Dual Office Holding Laws Made Easy*, available at https://www.oag.state.tx.us/AG_Publications/pdfs/dualoffice_easy.pdf.

Must a councilmember resign in order to run for the office of school board trustee?

It depends on the length of the councilmember’s term of office and how much time is left in that term. A councilmember (1) with a term of office of more than two years; and (2) who has more than one year and thirty days left in his or her term of office when announcing candidacy for

trustee must resign in order to run for the position of trustee. TEX. CONST. art. XI, § 11, Tex. Att'y Gen. Op. No. JC-0403 (2001).