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Home-Rule School Districts Questions and Answers (and Unanswered Questions)

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Home-Rule School Districts

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INTRODUCTION

What is a home-rule school district?

A home-rule school district is a school district that operates under a “charter” approved by the voters of the district. In theory, Chapter 12, Subchapter B of the Texas Education Code governs how a school district develops and adopts a home-rule charter, how it operates under one, and under what circumstances the charter may be revoked or otherwise terminated. However, Subchapter B raises as many questions as it answers. In this paper, we’ll explore both the answered and unanswered questions of Subchapter B.

How are home rule school districts like regular independent school districts?

A home-rule school district has the powers and entitlements granted to school districts and school district boards of trustees, including (presumably) those specifically enumerated in Chapter 11 of the Texas Education Code, unless otherwise abridged by the charter. *See* TEX. EDUC. CODE § 12.013.

How are home-rule school districts different from regular independent school districts?

The short answer is that it depends on the charter. A home-rule school district is exempt from many of the laws governing traditional public school districts. For example, the Texas Education Code lays out a specific governing structure for school districts, including regulations on the size and structure of the school board, what duties are reserved for the board, what duties are reserved for the superintendent, what duties are reserved for campus principals, and what duties are reserved for district and campus level decision-making committees. *See* TEX. EDUC. CODE Ch. 11, Subchapters D-F. In contrast, a home-rule district “may adopt and operate under any governing structure.” *See* TEX. EDUC. CODE § 12.025(a). In theory, the district wouldn’t have to be governed by an elected board of trustees at all.¹ Along the same lines, a home-rule district has significantly more flexibility in how it treats its employees. A home-rule district is not subject to state laws requiring teachers to be hired under certain types of contracts, it does not have to abide by the requirements to provide a duty-free lunch or planning period, and it does not have to provide any of the statutory-mandated procedural due process contained in Chapter 21 of the Education Code—at least, not unless the voter-approved charter includes such provisions.

How are home-rule school districts different from “regular” charters?

When most people think of a charter school, they are thinking of an “open-enrollment charter school.” *See* TEX. EDUC. CODE Ch. 12, Subchapter D. One of the major reasons a school district might want to convert to a home-rule district is to be given the additional flexibility granted to open-enrollment charter schools; however, home-rule districts are subject to more requirements than open-enrollment charters. Perhaps the biggest of these is that home-rule districts, like

¹ The home-rule district does, however, still have to comply with the Voting Rights Act. For more on this, *see* page 7, *infra*. Elimination of an elected board would likely be both legally and politically problematic. Additionally, since the charter itself must be approved by the voters, they would have to voluntarily take away their own voting power.

traditional districts and unlike open-enrollment charters, must enroll all students within their borders. *See* TEX. EDUC. CODE § 12.013(b)(3)(D). In addition, they have a tax base and minimum property tax rate and are otherwise still funded like a traditional district rather than under the provisions for charter schools—including both facilities funding and recapture requirements. *Id.* at § 12.013(b)(3)(M),(Q), and (R). Home-rule districts are also still subject to teacher-certification requirements and class-size limits, among other requirements that do not apply to open enrollment charters. *Id.* at § 12.013(b)(3)(B),(G), and (N). *Compare id.* at §§ 12.012-.013 with *id.* at §§ 12.103-.104.

BECOMING A HOME-RULE DISTRICT: DEVELOPING & ADOPTING THE CHARTER

Role of the Charter Commission

How does a school district become a home-rule district?

A school district becomes a home-rule district when a majority of voters, in an election that has at least 25% voter-turnout, approves a proposed charter that was developed by a charter commission appointed by the school district's board of trustees.

When *may* a school board appoint a charter commission to begin the process?

A school board may appoint a charter commission through a two-thirds vote of the total membership (not just those present and voting) of the board in favor of a resolution to do so. TEX. EDUC. CODE § 12.014(2).

When *must* a school board appoint a charter commission and begin the process?

A school board must appoint a charter commission when it receives a petition signed by 5% of the registered voters in the district requesting the appointment of a charter commission. TEX. EDUC. CODE § 12.014(1).

Does a school board have any obligation or authority to monitor the petition process?

Like many questions we will discuss in this paper, the Texas Education Code does not address this question. The Texas Election Code, Chapter 277, governs petitions required by other codes, and establishes the requirements a signature must meet in order to be valid. *See* TEX. ELEC. CODE § 277.002. Presumably, the school board is responsible for checking for those items and ensuring the petition has the requisite number of unique, valid, signatures. However, if there are charges of fraud, the investigation of such would be the purview of the District or County Attorney under Chapter 273 of the Election Code, which requires these officers to investigate if two or more citizens sign an affidavit alleging criminal conduct in connection with an election.

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First appeared as part of the conference materials for the
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"Who's in Control? Alternative School District Governance Statutes in the Texas Education Code"