



**ECTOR COUNTY, TEXAS**  
**Dustin Fawcett**  
**County Judge**

Texas Secretary of State  
Elections Division  
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12/14/2023

Ref: Requesting an election advisory opinion relating to whether state law requires the Ector County Utility District to hold a May election for district director positions.

Greetings,

I am submitting this request for an advisory opinion regarding whether the Ector County Utility District (ECUD) is required by state law to hold an election in May for positions on its board of directors, and whether any failure to comply with such requirements subjects the district to legal repercussions.

**Background**

ECUD is a water utility district created in 1976 pursuant to Chapter 51 of the Texas Water Code and the provisions of Section 59, Article XVI of the Constitution of Texas, by order of the Ector County Commissioner's Court and is governed by a 5-member board of directors, who are elected at-large to staggered four-year terms. It is recognized by the Texas Commission on Environmental Quality as a Municipal Utility District (MUD) as well.

Records provided by TCEQ and other sources shows that since its creation, elections for director positions were held on May election dates, the last on record being May 2006.

Since then, ECUD directors were either appointed to fill vacancies, or ran unopposed until November 2022, when the first formal November election was held.

ECUD has indicated an intent to continue holding elections on the November election date.

**Relevant Sources of Law**

Texas Water Code Sec 51.0732, and 49.103 (b) appear to mandate that elections for directors be held on a uniform election date, and the subsequent statute more specifically states the May election date.

Texas Water Code Sec. 51.0732 Notwithstanding the election date prescribed by Section 51.0731 of this code, an election held under that section shall be held on a uniform election date as provided by law.

Texas Water Code Sec. 49.103 (b) Unless a district holds its general election for officers on a date as otherwise provided by statute, after confirmation of a district, an election *shall* be held on the uniform election date, provided by Section 41.001, Election Code, in May of each even-numbered year to elect the appropriate number of directors.

A general guide to laws governing Water Districts produced by TCEQ also provides that director elections are held in May.

“For all general-law districts, and some special-law districts, director elections are held in even-numbered years on uniform election dates: either the first Saturday in February or the first Saturday in May.”

Additional research shows other similar districts around the state all hold their director elections in May.

Lastly, while Texas Election Code 41.0052 has provided windows in the past for local political subdivisions to move their election dates to the November election, the statute does not appear to afford this opportunity to Water Districts, and ECUD’s history of holding May elections should establish an additional requirement to maintain that precedent.

### **Questions Posed**

I am requesting an opinion from the Office of the Texas Secretary of State on whether ECUD is required by statute to hold elections for directors on the uniform May election date.

If state law does mandate ECUD to hold a May election for directors, would ECUD’s refusal to comply with that mandate violate any criminal or civilly enforceable laws, subject directors to removal, or create vacancies after the expiration of their regular terms in office upon failure to call the regular election?

I would like to expedite the issuance of this opinion to ensure there is sufficient time for ECUD to comply with calling a May election, if required to do so.

Sincerely,

Dustin Fawcett  
Ector County Judge