



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 7, 1997

The Honorable José R. Rodríguez  
El Paso County Attorney  
County Courthouse  
500 East San Antonio, Room 203  
El Paso, Texas 79901

Letter Opinion No. 97-064

Re: Removal of persons appointed to county purchasing board and related questions (ID# 39418)

Dear Mr. Rodríguez:

You ask what is the term of office for members of a county purchasing board, the procedure for removing a county commissioner from a position on that board (the "board"), and the procedure for abolishing the position of county purchasing agent. We believe that there is no term for a seat on a county purchasing board, the remaining county commissioners may simply remove one of their members from sitting on the board, and the board may abolish the position of county purchasing agent by voting to do so.

Section 262.011 of the Local Government Code establishes a purchasing board in all counties, which board may appoint a suitable person to act as the county purchasing agent. In counties with a population greater than 150,000, such as El Paso,<sup>1</sup> the board is composed of three district court judges and two members of the commissioners court. The commissioners court selects commissioners to sit on the board by simple majority vote. The statute provides neither terms for the members of the board nor procedures for the removal or change of the commissioners court representatives who sit on the board.

We first must decide whether the positions on the board constitute offices. The statute plainly makes the duties of the board *ex-officio* duties of the offices that the members already hold. See Attorney General Opinion M-305 (1968) at 2. The positions on the board are not offices. Therefore, specific removal provisions for county officers do not apply, nor does the term limitation provision of the constitution apply. See Tex. Const. arts. V, § 24 (removal of county officers), XVI, § 30(a) (term limitation); ch. 87 Local Gov't Code (removal of county officers).

Because the board members do not hold offices in that capacity, they may be removed from the board by the power that appointed them. *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 586 (Tex. 1955). Therefore, we believe that the commissioners court, which appointed the commis-

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<sup>1</sup>See Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: General Characteristics: Texas 2 (1992) (population 591,610).

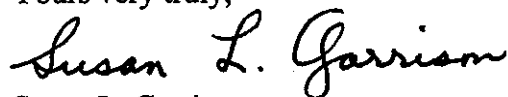
sioners to the board, may by simple majority vote remove those commissioners from the board and replace them with others. *See also Neeper v. Stewart*, 66 S.W.2d 812, 813 (Tex. Civ. App.--Eastland 1933, writ ref'd) ("the right to discharge, where no definite term is fixed by law, is in him who has the right to employ").

Finally, you ask about the procedure for abolishing the position of the county purchasing agent so that an agent could be appointed under section 262.0115. In Attorney General Opinion DM-35, this office said that unless there is a constitutional or statutory inhibition, the power to create an office includes the power to abolish it. Attorney General Opinion DM-35 (1991) at 2; *see Bennett v. City of Longview*, 268 S.W. 786 (Tex. Civ. App.--Texarkana 1925, no writ); *Carver v. Wheeler County*, 200 S.W. 537 (Tex. Civ. App.--Amarillo 1918, no writ); *City of Palestine v. West*, 37 S.W. 783 (Tex. Civ. App.--1896, no writ); *see also* 60 TEX. JUR.3D *Public Officers and Employees* § 25 (1988). As Local Government Code section 262.011 gives the board discretion to create the position, we believe the board has equivalent authority to abolish it. We find no statutory or constitutional inhibitions to such an action and believe that it is permissible. Because the board creates the position by a simple majority vote, that action may be reversed by the same method.

#### S U M M A R Y

There is no term of office for the positions on the county purchasing board, which can create and fill the position of county purchasing agent. Individuals sitting on that board may be removed by the powers that appointed them. The position of county purchasing agent may be abolished by simple majority vote of members sitting on the board.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee