



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-13-00354-CV

TARRANT REGIONAL WATER
DISTRICT

APPELLANT

V.

MONTY BENNETT

APPELLEE

FROM THE 153RD DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 153-264899-13

DISSENTING MEMORANDUM OPINION¹

I respectfully dissent from the majority's opinion and judgment.

Section 49.051 of the water code states that "[a] district shall be governed by its board."² Section 49.064 states that the board of a water improvement district

¹See Tex. R. App. P. 47.4.

shall hold such regular and special meetings as may be necessary for the proper conduct of the district's business. All meetings shall be conducted in accordance with the open meetings law, Chapter 551, Government Code. A meeting of a committee of the board, or a committee composed of representatives of more than one board, where less than a quorum of any one board is present is not subject to the provisions of the open meetings law, Chapter 551, Government Code.³

Under the second half of this section, a water district's board may have committees, and those committees' meetings are not subject to the provisions of government code chapter 551,⁴ the Open Meetings Act (TOMA).

In the first part of that section, however, the legislature requires the board to hold meetings for conducting the district's business and to hold those meetings in compliance with TOMA. The fair and reasonable reading of this section as a whole is that it allows TRWD committees to have meetings that do not comply with TOMA requirements, but not if they are essentially conducting the district's business. That is, the district's business is to be conducted by the board in compliance with TOMA.

TRWD committees are allowed to meet without complying with TOMA, and those committees can work on projects assigned to them by the board. But there is a line that TRWD committees must not cross. If the district's essential

²Tex. Water Code Ann. § 49.051 (West 2008).

³*Id.* § 49.064 (West 2008); see *id.* §§ 49.001 (West 2008) (defining "district" and "board"), 49.002 (West 2008) (stating that chapter 49 applies to all general and special law districts).

⁴See Tex. Gov't Code Ann. §§ 551.001–.146 (West 2012 & Supp. 2014).

business is being conducted by committees that are not following TOMA, and if the board is then doing nothing more than rubber-stamping every action recommended or taken by the committees, then TOMA is being violated. To hold otherwise is to allow TRWD to circumvent TOMA and to thwart the statute's very purpose.

The majority states that section 49.064 does not permit water districts to conduct their affairs in private.⁵ But under the majority's opinion, that is exactly what that section does allow. By allowing TRWD to have meaningful decisions take place in the committee meetings instead of in open board meetings, the majority approves of TRWD's using what is in essence a walking quorum. In my opinion, Bennett raised a fact issue about whether TRWD conducts its business in violation of the water code and TOMA. I therefore dissent.

/s/ Lee Ann Dauphinot

LEE ANN DAUPHINOT
JUSTICE

DELIVERED: November 26, 2014

⁵Majority Op. at 11.