

The Upper Trinity Debacle

Let us create a hypothetical but implausible, improbable and maybe even impossible, political scenario to set the stage for this week's nightmare:

Despite a lack of organization, coherent goals or popular candidates, the Democratic Party wins a veto-proof super majority the U.S. House. Their first order of business is to establish rules of conduct for elected representatives.

First, every House member's prescribed duty is to protect, defend and advance the goals and mission of the House, in conformance with its policies, rules and ethics, as defined by the Democratic Party platform. Any representative, the new rules of conduct state, who cannot do so is advised by the new rules to resign. If the House majority determines that the representative does not comply, it can impose censure or discipline upon the miscreant.

Options include a resolution, by two-thirds vote, of censure; a request to the voters of the representative's district to elect a new member to replace the miscreant; removal from any leadership position; prohibition from making a motion or seconding it; prohibition from introducing bills; removal from or non-appointment to any committee; and a fine for any cost incurred by the miscreant's conduct.

A broad interpretation of those loosely written rules might even prohibit the Congressman from going back into the district and publicly criticizing any actions taken by the new House of Representatives.

Instead of a super majority, as the rules are applied, the new House of Representatives would establish unanimity, since a vote against the leadership's policies could be considered to be out of conformance with its policies, rules and ethics.

"Impossible," you say. "No one in any governing body, in his right mind, would even propose such a set of rules," you say.

Think again.

The Upper Trinity Regional Water District board of directors and its venerable executive director, Thomas Taylor, have been locked in a debate for at least two years with officials of the largest member of the district, Flower Mound, about the proposal to build Lake Ralph Hall in the southwest corner of Fannin County, Flower Mound, which had obligated itself to a contract that resulted in higher-than-expected water costs, had argued since early 2004 that most of the cost of construction of the new lake would be borne by Flower Mound.

Flower Mound officials, commissioned a study that

contended there were less costly and more efficient ways to meet future water needs of the municipalities who buy water from Upper Trinity. The Krum City Council last year pondered the possibility of supporting Flower Mound's position but, after hearing a presentation by Upper Trinity in April, voted for a resolution supporting the proposed new lake.

When Krum's representative to the Upper Trinity board resigned following last year's municipal election, the council confirmed Mayor Larry Lamonica's appointment of Krum resident Tracy Knierim to represent the city on the Upper Trinity board of directors.

Oh, my!

Taylor and some of his board members worried that Knierim and the man who'd represented Copper Canyon to Upper Trinity for five years, Eric Metzger, were unqualified to serve on the Upper Trinity board. In a 12-to-7 vote, Upper Trinity directors ousted Knierim and Metzger from the board.

Their crimes? Knierim's job as assistant Town Manager and Metzger's job as fire chief of Flower Mound.

The executive director and the dozen members who voted to send Knierim and Metzger home made the automatic assumption, apparently, that they would vote for the interest of Flower Mound and not for the interest of Krum or Copper Canyon.

The vote to remove the two directors was identified as a "clarification" of the state conflict of interest law. I raised the question, in the Aug. 12 edition of the Krum Star, of how an appointed board at the regional level in Texas had the authority to "clarify" state law. Your columnist wasn't the only one who raised that question.

A request by Flower Mound to review the removal of the pair is pending at the attorney general's office.

Seeing the proposed new bylaw change on the agenda for last week's Upper Trinity meeting, Flower Mound and Copper Canyon officials alerted other member cities and a good-sized crowd turned out to express opposition to the measure, and it was rejected, 21-3. But some board members, the Denton Record-Chronicle reports, said the item shouldn't have been on the agenda, only on a work session for discussion only, and "fine-tuning." It had been in the planning stages for more than a year, board members said.

A memo sent to representatives of the other 17 cities served by Upper Trinity from the mayor of Flower Mound linked the bylaw amendment to a Water Issues Public Forum to be hosted on Feb. 27 in Double Oak by Denton County Commissioner Jim Carter.

"If adopted, this bylaw amendment could not only prevent UTRWD member entities and board members from freely participating in Commissioner Carter's Water Issues Public Forum without fear of retribution," the memo avers, "but it could also have a chilling effect on the ability of any member entity or board member to publicly question the UTRWD's policies and procedures in the future without fear of being removed from the board or suffering financial consequences."

An exaggeration?

Taylor is quoted as saying it wasn't intended to hamper debate. It was just a code of conduct.

Here is the text of the proposed bylaw:

Section 2.14 Duty of Directors. Directors are appointed by the respective Members of the District. The duty of each Director is to help govern the District in the best interest of the entire membership. Directors have a fiduciary duty and a general responsibility to protect, defend and advance the goals and mission of the District, and to do so faithfully.

Section 2.15 Conduct of Directors. When the Directors take the Oath of Office, they swear to "faithfully execute the duties of Director." Each Director has the duty to protect, defend and advance the goals and mission of the District, in conformance with policies, Bylaws and ethics of the District. Any Director who, in good conscience, can no longer support the decisions of the Board nor comply with the policies, Bylaws and ethics of the District should resign. On the other hand, if the Board determines that a Director is engaged in matters of ethics or conduct that could adversely affect the District, its Members or its programs, the Board may adopt such measures of censure or discipline deemed appropriate and not otherwise prohibited by law. Disciplinary options that the Board may consider include:

A. A Resolution of Censure, indicating that fellow Directors consider the Director's conduct to be contrary to the Oath of Office and contrary to the duty of each Director to protect, defend and advance the goals and mission of the District. To adopt a resolution of censure, at least two-thirds of the Directors present and voting must vote in favor of the resolution.

B. A Resolution of Censure may be forwarded to the governing body of the Member entity who appointed the Director. The Resolution may be accompanied with appropriate recommendations, including a request to appoint a new Director.

C. While under Censure, a Director is not eligible to serve as an Officer of the District; and, if already serving, may be removed by a majority vote of the board.

D. While under Censure, a Director may not make or second any motion for action by the Board of Directors.

E. While under Censure, a Director may not have an item placed on the agenda under the standard policy of the District.

F. With or without a Resolution of Censure, a Director may be removed from, or not appointed to, any or all committees of the Board.

G. If a Director or Member entity causes the District to incur cost without approval of the Board or as a result of conduct or action taken by that Director or by the Member entity contrary to decisions made by the Board, the Board may assess such cost against that Member.

Section 2.16 Procedures for Review of Conduct of Directors.

A. An inquiry into the conduct of a Director may be initiated by either of the following alternative procedures:

1. By unanimous agreement of the Officers of the District evidenced by a written statement approved and signed by the Officers, or

2. By written request of any Director having the right to vote on administrative matters, subject to at least two other Directors offering a "second" to the request.

Upon initiation of an inquiry, the individual Director shall be notified in writing by the President. The Officers and the Board shall provide the Director due process of law, a reasonable time in which to respond, and must assure fairness in the process. In such inquiry, the affected Director shall have the option of the inquiry being conducted in Executive Session of the Board of Directors or in public during a public meeting called for the purpose of reviewing the in

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quiry. Such inquiry shall be initiated by making a request to the Board of Directors to consider a personnel matter involving a Director on the Board of Directors.

B. Whether such request is initiated by procedure A.1. or A.2. above, the Officers shall have the responsibility to see that the appropriate item is posted to a future Agenda of the Board for discussion in Executive Session. After discussion in Executive Session, the Board may:

1. Continue the discussion of the personnel matter in Executive Session from time to time, or

2. May refer the matter to Committee for review, investigation and recommendation, or

3. May determine to investigate or review the matter as a committee of the whole, or

4. May take up the matter for consid-

eration and action in open session, either prior to any referral to Committee or after receiving a recommendation from the committee.

C. Unless otherwise determined by the Board of Directors, all personnel matters concerning conduct of Directors shall be referred to a special Committee composed of Board Members appointed by the President, which Committee shall have the authority and resources to review and investigate such matters to the extent the Committee deems necessary and appropriate.

D. Upon its own motion or upon the recommendation of the Committee, the Board of Directors may take such action or impose such discipline available under law, which discipline is deemed to be in the best interest of the District and not otherwise precluded under the Bylaws of the

District.

(Underlines added by this writer)

What's hard to understand is this: If Lake Ralph Hall is the best answer to the region's long-term future water needs, what is there to fear from an open discussion of a counterproposal?

Krum's City Council looked at the options last year and concluded that UTRWD's plan was good.

But what towns and cities in the district look at as a measure to stifle debate could engender second thoughts.

It has in Krum, as the council is taking a second look at one of three options the city had two years ago - drilling another underground well. At the time, the capital cost to drill a well was the sticking point. But if annual production costs are significantly less than the cost of water supplied by Upper Trinity, it's a factor to consider.

On the other hand, if the water underground might eventually be depleted, surface water from man-made lakes may still be the long-term future for the area, though the current North Texas drought might diminish our faith in future surface water supplies.

Representatives to the Upper Trinity board from the municipalities should have as their first priority their municipality's best interest. If that coincides with the best interest of the entire region, no problem.

But if not, open discussion could establish mutually acceptable priorities.

This writer, an old-time Burns & Allen radio show fan, remembers Gracie Allen's zany definition of the word "Totalitarian." A toe, of course, is the finger-like digit we find at the end of our feet. To tally means to count. And the verb tarry signifies lingering, remaining in one place before slowly moving on.

Thus, a totalitarian is one who sits around counting his toes.

It makes as much sense as what some members of the Upper Trinity board tried to do last week.

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