

Pre-K group sues to get on ballot

Opposition from county judge spurs nonprofit to head to court

By Kiah Collier

Harris County Judge Ed Emmett said Monday he would not place a 1-cent property tax on the November ballot intended to buoy area preschools, prompting a lawsuit by a local nonprofit that supplied tens of thousands of signatures on a petition asking him to do so.

Emmett, a critic of the effort since it launched at the beginning of summer, said the ballot language on the petition does not comply with a repealed chapter of the Texas Education Code.

As part of its Early to Rise campaign, the nonprofit Harris County School Readiness Corp. got more than 85,500 registered voters to support its initiative, well beyond the 78,824 it needed to require Emmett to order an election to expand the taxing authority of the Harris County Department of Education.

Emmett has cited concerns about the applicability of the decades-old state law on which the group based its petition drive, as well as oversight on how the tax revenue would be spent.

The law, dating back at least 78 years, was repealed in 1995 when the Legislature reorganized the education code. It says the county judge must call an election to raise the education department's tax rate if enough valid signatures are gathered.

Citing a seven-page legal opinion by a private lawyer, Emmett conceded that the antiquated law still is applicable, because a section of the education code says it is, but said that the ballot language on the petition is too specific about both the nature of the proposed tax - specifically, that it says the tax would be "additional," on top of the education department's current 1-cent taxing authority - and how it would be used.

'Significant departure'

"Describing the requested tax as 'additional' is a significant departure from the statute because there is no authority in Chapter 18 for more than one tax," Emmett said at a news conference on

About the state law

The disagreement between Harris County Judge Ed Emmett and the nonprofit Harris County School Readiness Corporation centers on a decades-old state law - two sections of the Texas Education Code, in particular - that says the county judge must call an election to raise a county education department's tax rate if enough valid signatures are gathered on a petition.

The law, repealed in 1995 when the Legislature reorganized the education code, gave county education departments in the state authority to levy a so-called "equalization tax" to raise revenue for "the support of the public schools of the county."

Unlike school districts, whose governing bodies can raise taxes by a vote, the equalization tax can be authorized only by an election called via citizen petition.

Monday, the last day items could be placed on the Nov. 5 ballot. "If early childhood expenditures can be controlled by the general public through a tax election, then why not vocational educational, agricultural education, adult education, special education or any other source of educational programs that the public imagination might run to?"

Emmett said he could not change the ballot language because it would be different than the language on the petition that people had signed.

His lawyer, William Bednar, who drafted the opinion, confirmed that if the language had been different - meaning less restrictive - Emmett would have had to order the election.

Former Houston City Attorney Jonathan Day, one of the leaders of the nonprofit group behind the petition, has said that the law places no firm restrictions on ballot language, and that the group had chosen specific wording so that voters would know how the more than \$25 million the tax would generate would be used.

'The law ... is clear'

Day is listed first on the lawsuit, filed in a state district appeals court in Houston. It implores Emmett to order the election immediately, and requests the court make a decision by Sept. 16 "assuring sufficient time to satisfy the printing deadline for" the election.

"The law, we believe, is clear," said Richard Mithoff, a lawyer for the non-

profit, formed by a group of influential local business and community leaders in response to an April report that found that greater investment in early childhood programs was crucial to the region's future success.

Mithoff described Emmett's decision as a violation of voter rights, and said case law clearly demonstrates he should place the item on the ballot and then challenge the legality in court.

Emmett told reporters two weeks ago, on the day the group delivered the petition to him, that he expected to get sued no matter what he decided to do.

"We will deal with that as we have to," he said Monday when asked about a potential lawsuit.

Harris County Commissioners Court on Tuesday will consider approving no more than \$10,000 to pay Bednar for his services.

Using outside counsel

Emmett revealed last week that he had chosen to hire outside counsel to review the law even after the county attorney, who typically handles civil matters, recommended he put the item on the ballot. He said he could not trust the office after it allegedly leaked its opinion to news media, which he described as a violation of attorney-client privilege. The office denies the leak.

Emmett had also requested an opinion on the law from the state attorney general but has not yet received a response.

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