

**Request By:** Rick Gilpin, Deputy Chief Opinion Committee

## **Opinion**

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The Honorable Marcos Hernandez, Jr.  
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You request our opinion as to whether a prior felony conviction disqualifies an individual from serving as a member of a school district board of trustees.

The only qualification imposed upon a school trustee by the Education Code is that he or she be a “qualified voter.” [Educ. Code § 11.061](#). By contrast, [section 141.001, Election Code](#), requires that, in order “to be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must,” *inter alia*, “have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities.” Section 141.001 further provides: “A statute outside this code supersedes Subsection (a) to the extent of any conflict. Subsection (a) does not apply to an office for which the federal or state constitution [\*2] or a statute outside this code prescribes exclusive eligibility requirements.” Since [section 11.061, Education Code](#), which requires merely that a school trustee be a “qualified voter,” is the only statute or constitutional provision that specifically relates to the eligibility of school trustees, it is clear that neither “the federal or state constitution nor a statute outside [the Election] Code prescribes *exclusive* eligibility requirements” for the position of school trustee. [Elec. Code § 141.001](#) (emphasis added).

At present, [section 11.002 of the Election Code](#) defines “qualified voter,” *inter alia*, as a “person who has not been finally convicted of a felony,” but adds a caveat that permits the individual to vote after two years have elapsed from the date of his discharge from custody or completion of probation. It might thus be argued that a “qualified voter” for purposes of the Education Code is a person who either (1) has never been convicted of a felony [or been pardoned] or (2) has been convicted of a felony but has completed probation or been discharged from custody more than two years previously. In our opinion, however, the caveat does not act to mitigate the [\*3] blanket disqualification for convicted felons found in [section 141.001 of the Election Code](#).

The present Education Code was enacted in 1995 as a non-substantive revision to the prior code. Act of May 27, 1995, 74th Leg., R.S., ch. 260, § 1, 1995 Tex. Gen. Laws 2207, 2207. Section 11.061 derives from section 23.19 of the 1969 codification and ultimately from earlier statutes. Act of June 2, 1969, 61st Leg., R.S., ch. 889, § 1, 1969 Tex. Gen. Laws 2735, 2735. By contrast, the provision of the Election Code disfranchising felons was liberalized only in 1983. Act of May 26, 1983, 68th Leg., R.S., ch. 792, 1983 Tex. Gen. Laws 4628, 4628. Thus, at the time the source law for section 11.061 was originally enacted, all felons were permanently disfranchised.

In a similar situation, we held that a statute that prescribed the qualifications for the office of alderman in a type B general law city did not “represent a legislative intent to carve out an exception to the general rule excluding felons from public office.” Attorney General Opinion DM-89 (1992) at 3. Analogously, we believe the legislature, when it long ago prescribed the “qualified voter” requirement for school trustee elections, [\*4] never contemplated that a convicted felon might one day achieve the status of “qualified voter.” We hold therefore that a “qualified voter” for purposes of [section 11.061 of the Education Code](#) is a person who has never been convicted of a felony.

This conclusion means also that no “conflict” exists between section 11.061 and [section 141.001 of the Election Code](#), since both require that eligibility for the position of school trustee is dependent upon never having been convicted of a felony. We note however that Attorney General Opinion DM-89 also addressed the “conflict” issue. In that opinion, a provision of the Local Government Code required an individual, in order to qualify as an alderman, to reside within the limits of a municipality for at least six months. Attorney General Opinion DM-89 (1992) at 2. We concluded that no conflict existed between this requirement and the provision of section 141.001 barring felons from public office. *Id.* Similarly, we believe it is obvious that there is no conflict between the “qualified voter” requirement of section 11.061 and section 1410.01's prohibition on convicted felons.

We hold that a person who does not meet the eligibility requirements [\*5] of [section 141.001, Election Code](#), is not eligible to the office of school trustee and thus, that a prior felony conviction from which the person has not been pardoned or otherwise released from the resulting disabilities disqualifies an individual from serving in that position.

### **SUMMARY**

Prior conviction of a felony disqualifies an individual from serving as a member of the board of trustees of an independent school district, unless the person has been pardoned or otherwise released from the resulting disabilities.

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