

Rural Water District No. 5, McCurtain County, Oklahoma (the "District")

The following Questions are frequently received by the District regarding meetings of the membership and related issues. By statute, the members must conduct an "annual" meeting, however there can also be membership meetings other than the "annual meeting" if called in accord with the bylaws (a special meeting of the membership). A membership meeting is different and independent from a regularly scheduled meeting of the board of directors which typically occurs monthly.

The following Answers have been prepared by legal counsel for the District.¹

1. Question: What Is The Legal Status Of The District ?

Answer:

Title 82 of Oklahoma Statutes, Section 1324.6 provides: "...the district shall be a body politic and corporate *and an agency* and legally constituted authority *of the State of Oklahoma* for the public purposes set forth in this act." The Oklahoma Supreme Court in 2014 clarified the legal status of Oklahoma Rural Water Districts by ruling as follows: "¶ 8 A water district created under the Rural Water Act is an agency and legally constituted authority *of the State of Oklahoma*, but cannot levy any taxes whatsoever or make any assessments on property. 82 O.S.2011, § 1324.6. It is a public nonprofit entity operated for the public purpose of developing and providing an adequate water supply to serve and meet the needs of rural residents within the territory of the district. § 1324.3. Its revenues are limited to rates, fees, rents and other charges for water and services which, in turn, must be devoted to payment of (1) operating and maintenance expenses, (2) principal and interest on outstanding obligations, and (3) reserves for improvements, retirement of indebtedness, new construction, depreciation and contingencies. § 1324.11. As a public nonprofit entity, its rates and revenues are not to exceed the amounts required for these purposes." *Sinor's Long Bay Marina, LLC v. Wagoner Cnty. Rural Water Dist. No. 2*, 2014 OK 43, ¶ 8, 335 P.3d 262, 264. Oklahoma Rural Water Districts are not divisions of county government nor are they a component of municipal government. An Oklahoma Rural Water District is an agency of the State of Oklahoma even though the District is governed by a board of directors voted for by the participating members of the District. A participating member is a person or entity that owns at least one "benefit unit."

2. Question: What Is A "Benefit Unit," A "Rural Resident" And A "Participating Member" As Those Terms Appear In Oklahoma Statutes?

Answer:

These terms are defined by statute (Oklahoma Statute Title 82, Section 1324.2(7-8)):

"Benefit unit" means a legal right to one service connection to the district's facilities and to participate in the affairs of the district.

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"Participating member" means any rural resident who has subscribed to one or more benefit units.

"Rural resident" means any natural person, firm, partnership, association, corporation, business trust, federal agency, state agency, state or political subdivision thereof, municipality of ten thousand (10,000) persons or less, or any other legal entity, owning or having an interest in lands within the rural area located within the boundaries of the district.

3. Question: If My Wife And I Own More Than One Benefit Unit, Why Are We Limited To Only One Vote Regardless Of The Number Of Benefit Units We Own Together Jointly ?

Answer:

The limitation on voting for board of director positions was imposed by the Oklahoma Legislature when it adopted the statute shown below:

"3. For the purpose of election of board members and for such other purposes as the bylaws may prescribe, annual meetings of participating members shall be held by each district each year following the year of incorporation of such district. The board of directors shall cause notice of the time and place of each annual meeting and the purpose thereof to be given to each of its participating members. Each participating member shall be entitled to a single vote, regardless of the number of benefit units to which the member has subscribed."

Source: Title 82, Oklahoma Statutes, Section 1324.16(3)

Notice that it was the legislature (and not water districts themselves or their members) that imposed the "single vote" limitation regardless of the number of benefit units subscribed to by the member. If husband and wife each owns land "separately" and each owns one or more benefit units "separately" it is possible that each could be entitled to "one vote." *However no court has yet to rule on this issue.*

Notice also that a "participating member" is defined by Oklahoma Statute Title 82, Section 1324.2(8) as a "rural resident." The term "rural resident" is defined by Oklahoma Statute Title 82, Section 1324.2(5) as:

"Rural resident" means any natural person, firm, partnership, association, corporation, business trust, federal agency, state agency, state or political subdivision thereof, municipality of ten thousand (10,000) persons or less, or any other legal entity, owning or having an interest in lands within the rural area located within the boundaries of the district."

This definition, when applied to the "single vote" statute, means that regardless of the number of benefit units *an entity* owns, the entity is only allowed a single vote. No court in Oklahoma has yet to decide how many votes are allowed if individuals own more than one legal entity (corporation, limited liability company, etc.) and each such entity owns at least one benefit unit.

4. Question: Who Is Eligible To Vote ?

Answer:

A "participating member" defined above, is eligible to vote. The following are eligible to vote:

"any natural person, firm, partnership, association, corporation, business trust, federal agency, state agency, state or political subdivision thereof, municipality of ten thousand (10,000) persons or less, or any other legal entity, owning or having an interest in lands within the rural area located within the boundaries of the district."

To be eligible to vote, a voting member must own or have an interest in land within the boundaries of the district but does not actually have to live within the District. The statute defines "rural resident" very broadly. The word "resident" typically implies that the person or entity must "reside" in the District but the statutory definition is broader than that, requiring only ownership or an "interest" in property, and not actually needing to "reside" (live) within the District's boundaries.

However, the right to vote by an eligible person or entity, is limited as explained in the answer to Question No. 3.

If the participating member is a legal entity, the District requests that the person exercising the right to vote on behalf of an entity, present *some evidence* (such as a letter from the entity signed by its stockholders or members) stating who is authorized to vote on behalf of the participating member that is not a natural person but rather is an entity (corporation, LLC, etc.). The District does not have any rule, regulation or bylaw that requires any specific type of written authority to vote for an entity.

You (or the entity you are authorized to vote for) must be in "good standing" and not delinquent regarding payment for water service and not in violation of any District rules and regulations or in violation of the District's bylaws.

5. Question: Can a Non-Resident Landowner Vote At A Meeting Of The Membership ?

Answer:

The short answer is "yes." See Answer to Question 4 above for a more complete explanation.

6. Question: Are Tenants Or Renters Eligible To Vote At A Meeting Of The Membership ?

Answer:

Tenants and Renters cannot vote unless they own or have an interest in the real property situated inside the boundaries of the District and have subscribed to (paid for) at least one benefit unit.

7. Question: How Do I Verify My Eligibility To Vote ?

Answer:

The District Manager or any Board Member can examine the records of the District and advise if you are eligible to vote. You must be in "good standing," namely not delinquent regarding payment for water service or in violation of any District rules and regulations or the District's bylaws.

8. Question: Can I Vote On Behalf Of Another Person (Proxy Voting) ?

Answer:

The current bylaws of the District (in effect when this paper was prepared) forbids voting on behalf of another person (a natural person, not an entity) which is usually called "proxy voting." When an authorized person is voting for an entity, that is not proxy voting.

**10. Question: Who Counts The Votes ? How Are Votes Counted ?
Who Verifies The Vote ?**

Answer:

The District has no specific rules or regulations regarding specifying who must count the votes nor any rule/regulation regarding whether the in-person voting must be by ballot or a show of hands, or a voice vote. The votes are verified during the voting process by those designated by the members personally present to perform verification. The members can delegate the verification process to District employees. Thus the membership at a meeting of the membership can decide these procedural issues among those present by motion and vote at the meeting of the membership.

**11. Question: What Matters Are Authorized To Be Voted On At A
Meeting Of The Membership ?**

Answer:

All matters to be voted on including voting to fill an expiring term of any directors, must be clearly stated on the agenda that is circulated and posted in advance of the meeting of the membership. If you want something placed on the agenda for the membership meeting, you must request the District Manager or a Board Member to add the matter to the agenda well in advance of the day the agenda must be posted, sent to the members, and sent to the Secretary of State. If the matter is

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not on the agenda it cannot be voted on. The purpose of an agenda is to give advance notice to the members as to what will be considered for voting. Some members may choose not to attend or participate in voting in person at the meeting of the membership or by ballot voting in advance of the meeting, based on the absence of something on the agenda. Generally non-substantive issues, such as authorizing someone present to count the votes by those present, which are only procedural and not substantive, can be voted on at the meeting of the membership without that procedural item being on the agenda.

12. Question: How Can The Members Obtain Information Regarding Issues To Be Voted On and Information Regarding Candidates For Director Positions To Be Filled ?

Answer:

You should contact the District Manager or Board members and ask them to provide you with the requested information. Nearly all records of the District are subject to the Open Records Act, and you may submit an Open Records Act request. You may also contact the Oklahoma Secretary of State to obtain a copy of an agenda.

13. Question: Who Is Eligible To Be A Director To Sit On The Board of Directors ?

Answer:

The District's bylaws provide as follows:

Any member seeking election or re-election to the Board of Directors of Rural Water District #5, McCurtain County, Oklahoma:

- a) Must be a member of good standing.
- b) Must file a written notice of candidacy with the Secretary of the District not more than 60 days and not less than 30 days before the Annual Meeting and Election of the participating members.

And

- c) Must have owned a Benefit Unit for at least 90 days.

These provisions mean that the member to be elected, must be a natural person and not an entity.