

need a
brief

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Opinion Committee

Madeline Johnson
Opinion's Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear Ms. Johnson:

I am requesting an opinion from the Attorney General concerning the Constitutionality of Sec. 23.12(a) Texas Property Tax Code.

Subsection (a) reads: "The market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business. An inventory shall include residential real property which has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented, and produces no income."

This provision relating to vacant residential real property was added by the Legislature during the recent down trend in subdivision sales. Its constitutionality has been questioned but no appellate court opinion rendered.

Hays County has a number of residential subdivisions fitting the special category. The provision in question gives special treatment to a special class of property. It does not apply to commercial lots or to any other class of real property and appears to be in direct conflict with the Equality and Uniformity provision of our State Constitution Article 8, the Due Process Clause and the statutory definition of Market Value.

I would be greatly in your debt if this opinion could be expedited because of the need of our taxing entities.

Sincerely,



Marcos Hernandez, Jr.
Criminal District Attorney