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OPINION COMMITTEE



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October 15, 2008

RQ-0755-GA

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

The Honorable Greg Abbott
Office of the Attorney General
Opinion Committee
P.O. Box 12548
Austin, Texas 78711

Re: **OPINION REQUEST**

Clarifications needed regarding:

Texas Tax Code Section 23.23
Texas Tax Code Section 25.18
Texas Tax Code Section 6.01
Texas Tax Code Section 6.05 (i)
Texas Government Code Section 403.302

Dear Attorney General Abbott:

Please accept this letter as a request, pursuant to Texas Government Code Section 402.042, for an opinion from your office for clarification on the interpretation of Tax Codes section 23.23, and 25.18 and their relation to Tax Code sections 6.01, 6.05, Government Code Section 403.302 and the Texas Constitution Article VIII, Section 1.

BACKGROUND

I appreciate that the Attorney General cannot opine on specific factual matters. However, a clarification of your opinion regarding the law would greatly benefit this office and Webb County as well as the Webb County Appraisal District; City of Laredo; Laredo Independent School District; United Independent School District and other taxing units participating in the Webb County Appraisal District.

A citizen's activist group, Citizens United Toward Fair Assessment and Taxes (CUTFAT), is circulating an initiative petition that seeks to have the governing bodies of the local taxing entities that make up the Webb County Appraisal District Board of Directors submit a motion and vote in favor of that motion. The language of the petition they are circulating is:

"That the local municipalities and taxing units, through their representatives to the Webb County Appraisal District Directors Board, submit the motion and vote in favor, to appraise existing properties of this county, excluding new improvements exceeding values of \$1000, to every three years appraisals instead of every year in accordance with Texas Property Code Sec.25.18."¹

The CUTFAT citizen petition raises numerous legal questions, which I believe requires clarification from your office.

- 1. Is the question of annual vs. three-year appraisals a question that may be submitted to voters based upon an initiative or referendum petition?**
- 2. Do the changes to Tax Code Section 25.18 adopted by Senate Bill 1652 during the Regular Session of the 79th Legislature, allow an Appraisal District to appraise property in the Appraisal District every three (3) years? If so, how is this three (3) year appraisal reconciled with the Appraisal District's duty under Tax Code Section 23.01 to appraise property "at its market value as of January 1?"**
- 3. Do the changes to the Texas Constitution and Section 23.23 approved by voters and effective, January 1, 2008 allow for a County Appraisal District to conduct an appraisal on anything other than an annual basis?**
- 4. How would once every three-year appraisals affect the annual Property Value Study and the state education funds to school districts that are dispersed using formulae based upon the results of the property value study?**

DISCUSSION

- 1. Is the question of annual vs. three-year appraisals a question that may be submitted to voters based upon an initiative or referendum petition?**

In general, Texas citizens do not have initiative and referendum powers on either the statewide or county level. The Texas Legislature has granted county residents the

¹Citizens United Toward Fair Assessment and Taxes (CUTFAT), Petition for Local Option Election to Appraise Local Properties For Property Tax Purposes Every Three Years, Available at: <http://cutfat.org/PetitionforLocalOptionElection.doc>, last accessed August 27, 2008.

authority to petition County government in very limited instances. For example, Section 152.072(a) of the Local Government Code authorizes the qualified voters of a county with a population greater than 25,000 to petition the commissioners court of their county to increase the minimum salary of each member of the sheriff's department.²

Home-rule cities have the inherent power of initiative, referendum and recall, but these powers are unique to home-rule cities and are not available to voters at any other level of government.³

The voters of the City of Laredo have the powers of initiative and referendum, The Laredo City Code states, "(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city council. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the city council or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code, and shall also include all amendments to the Charter during the period."⁴ However, voters do not have the power to petition the School Boards of the United Independent School District, Laredo ISD and the Webb Consolidated ISD. Texas voters do not have the power to petition county government in the form of initiative, referendum and recall.

Appraisal District Boards are one step removed from the public at-large in that the voting public elect the representatives of their choice to the respective governing bodies of the participating taxing units (school district boards, city councils, etc.), who in turn appoint the Directors of the County Appraisal Districts. Tax Code Section 6.03 (a) states, "Five directors are appointed by the taxing units that participate in the district as provided by this section."⁵ The Legislature has provided for the recall of Appraisal District Directors in Tax Code Section § 6.033, "The governing body of a taxing unit may call for the recall of a member of the board of directors of an appraisal district appointed under Section 6.03 of this code for whom the unit cast any of its votes in the appointment of the board."⁶

The Legislature created Appraisal Districts as a way of professionalizing and de-politicizing the appraisal process.⁷ The Legislature has provided for the general public's interaction with Appraisal Districts in explicit circumstances and with specific provisions of law. The Appraisal Review Boards created for each Appraisal District by Tax Code Section 6.41 provide property owners with the opportunity to protest their property valuations for tax purposes under the provisions of Tax Code 41.01. The

² Tex. Loc. Gov't. Code Ann. § 152.072(a).

³ Texas Municipal League, Home Rule Handbook, P. 9, available at <https://www.tml.org/pdf/texts/HRHChapter1.pdf>.

⁴ Code of Ordinances, City of Laredo, Texas Sec. 1-5, Supplementation of Code, available at: <http://www.municode.com/resources/gateway.asp?pid=12258&sid=43>, last accessed August 28, 2008.

⁵ Tex. Tax Code Section 6.03 (a).

⁶ Tex. Tax Code Section § 6.033 (a).

⁷ Texas Taxpayers and Research Organization, Statement to Select Committee on Property Tax Relief and Appraisal Reform, June 17, 2008, available at

http://www.ttara.org/docs/2008Comments_SelectCommitteeOnPTax.pdf, last accessed August 28, 2008.

Legislature has not, however, provided for the direct involvement of citizens in the policy determinations of County Appraisal Districts. Those powers are exclusively reserved for Appraisal District Boards of Directors by Tax code section, 6.03 (a) which states, "The appraisal district is governed by a board of directors."⁸

In light of these provisions relating to the governance of Appraisal Districts and the ability (or lack thereof) of citizens to petition most of the governmental units that participate in the Webb County Appraisal District, is the CUTFAT petition for a three-year appraisal one that has any binding legal effect on the Webb County Appraisal District or on any of the taxing units that participate in the Webb County Appraisal District?

2. **May an appraisal district in a market that, over the last five years, has appreciated at 8% per year use a three year reappraisal plan as allowed by Tex. Tax Code Sect. 25.18 and still appraise property at its "market value as of January 1" as required by Tex. Tax Code Sect. 23.01?"⁹**

The Texas Tax Code requires that except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1."¹⁰ And, "the market value of property shall be determined by the application of generally accepted appraisal methods and techniques."¹¹

Tax Code section 25.18 was amended during the 79th Legislature to require Appraisal District Boards of Directors to develop and implement a periodic reappraisal plan. Section 25.18, captioned "Periodic Reappraisals" states in relevant part:

"(a) Each appraisal office shall implement the plan for periodic reappraisal of property approved by the board of directors under Section 6.05(i). **(b) The plan shall provide for the following reappraisal activities for all real and personal property in the district at least once every three years:** (1) identifying properties to be appraised ... (2) identifying and updating relevant characteristics of each property in the appraisal records; (3) defining market areas in the district; (4) identifying property characteristics that affect property value in each market area... (5) developing an appraisal model that reflects the relationship among the property characteristics affecting value in each market area and determines the contribution of individual property characteristics; (6) applying the conclusions reflected in the model to the characteristics of the properties being appraised; and (7) reviewing the appraisal results to determine value."¹² (*emphasis added*).

⁸ Tex. Tax Code, Section 6.03 (a).

⁹ Tex. Tax Code, Section 23.01 (a), as amended.

¹⁰ Id.

¹¹ Tex. Tax Code, Section 23.01 (b), as amended.

¹² Tex. Tax Code, Section 25.18 (a), as amended.

Tax Code Section 25.18 operates in conjunction with Tax Code Section 6.05 (i) which requires each CAD board to “biennially develop a written plan for periodic reappraisal for all properties within the boundaries of the district.”¹³ Section 6.05 (i) was added to the Tax Code during the 79th Texas Legislature in 2005 by Senate Bill 1652, the same legislative vehicle that emended Tax Code Section 25.18.

The only reported case interpreting the “periodic reappraisal” required by Section 6.05 (i) is *Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist.*¹⁴ In that case, the property owner tried to conflate the three year reappraisal plan requirement and the Change of Use determination governed by Tax Code Section 23.55 to require that an Appraisal District make a determination of a change of use within three years of the change, lest the statutes be rendered meaningless. Dallas’ Fifth Court of Appeals rejected the property owner’s contention stating, “we conclude that neither section 25.18 nor 23.55 requires that a change of use determination be made within three years after the change of use occurs and grafting the reappraisal deadlines onto the change of use determination statute is not necessary to give either statute meaning.”¹⁵

Are the advocates of three-year appraisals similarly conflating the 25.18 requirement of a periodic reappraisal plan that provides for “reappraisal activities for all real and personal property in the district at least once every three years” into a general requirement that Appraisal Districts be allowed to reappraise only once every three years?

Generally speaking, Webb County has appreciated at approximately 8% a year for the last 3 years. To construct a simple example, if the Webb County Appraisal District were to adopt once-every-three-years appraisals, a home valued at \$100,000 in a base year when it was appraised (say 2005) would have a market value of \$108,000 on January 1, 2006; \$116,000 on January 1, 2007 and; \$124,000 on January 1, 2008. Yet the appraised value on January 1 in 2006 and 2007 would be \$100,000 and the property would not be subject to reappraisal until January 1, 2008.

Do the changes to Tax Code Section 25.18 adopted by Senate Bill 1652 during the Regular Session of the 79th Legislature, allow an Appraisal District to appraise property in the Appraisal District every three (3) years? If so, how is this three (3) year appraisal reconciled with the Appraisal District’s duty under Tax Code Section 23.01 to appraise property “at its market value as of January 1?”

- 3. Do the changes to the Texas Constitution and Section 23.23 approved by voters and effective, January 1, 2008 allow for a County Appraisal District to conduct an appraisal on anything other than an annual basis?**

¹³ Tex. Tax Code, Section 6.05 (i).

¹⁴ *Panther Creek Ventures, Ltd. v. Collin Cent. Appraisal Dist.*, 234 S.W.3d 809, (Tex. App. 5th District, Dallas, 2007).

¹⁵ *Id.* at 812.

On November 6, 2007, voters approved HJR 40 (listed on the ballot as Proposition 3), an amendment to the Texas Constitution that limits Ad Valorem appraisal increases to 10% since the most recent appraisal.

The changes approved by the voters are codified at Tax Code Section 23.23. Prior to the changes to 23.23 approved by the voters, section 23.23 (a) read,

“The appraised value of a residence homestead for a tax year may not exceed the lesser of:

- (1) the market value of the property; or
- (2) the sum of:
 - (A) 10 percent of the appraised value of the property for the last year in which the property was appraised for taxation times the number of years since the property was last appraised;
 - (B) the appraised value of the property for the last year in which the property was appraised; and
 - (C) the market value of all new improvements to the property.”¹⁶

After voter approval of HJR 40, Section 23.23 now reads:

“(a) Notwithstanding the requirements of Section 25.18 and regardless of whether the appraisal office has appraised the property and determined the market value of the property for the tax year, an appraisal office may increase the appraised value of a residence homestead for a tax year to an amount not to exceed the lesser of:

- (1) the market value of the property for the most recent tax year that the market value was determined by the appraisal office; or
- (2) the sum of:
 - (A) 10 percent of the appraised value of the property for the preceding tax year;
 - (B) the appraised value of the property for the preceding tax year; and
 - (C) the market value of all new improvements to the property.”¹⁷

According to the legislative history of HJR 40, the change is designed to reduce the sticker shock a property owner whose property has not been appraised in a number of years would receive when receiving a ballooned appraisal to account for three years of the property's increase in value. Senate Research Center's Bill Analysis for HB 438, the

¹⁶ Tex. Tax Code, Section 23.23 (a), Added by Acts 1997, 75th Leg., ch. 1039, § 47, eff. Jan. 1, 1998. Amended by Acts 2003, 78th Leg., ch. 1173, § 9, eff. Jan. 1, 2004.

¹⁷ Id, Amended by Acts 2007, 80th Leg., R.S., Ch. 1355, § 1, eff. January 1, 2008.

enabling legislation for HJR 40 contains the following Author's/Sponsor's statement of intent:

“Current law prohibits the appraised value of a residence homestead for ad valorem tax purposes from increasing more than 10 percent in a single year, but allows for an increase of 10 percent for each year that passes since the last tax appraisal. Therefore, an increase in the taxable value of a property of more than 10 percent may be incurred when a property has not been appraised in over a year.

H.B. 438 limits a homestead's appraisal value for ad valorem tax purposes from increasing more than 10 percent in a single year, regardless of when the most recent tax appraisal took place.”¹⁸

Prior to voter approval of Proposition Three, that same home that was appraised at \$100,000 in 2005, not reappraised for 2006 and 2007 but reappraised in 2008, would have a capped value of \$130,000 when reappraised in 2008. Now that Proposition Three has passed and the changes to 23.23 are in place, that same house would have a cap value of \$110,000.

Appraisal Districts are charged with the duty to appraise “property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.”¹⁹ Tex. Tax Code Ann. §§ 6.01(b).

Chapter 23 of the Tax Code mandates that “all taxable property is appraised at its market value as of January 1”²⁰ and that “the market value of property shall be determined by the application of generally accepted appraisal methods and techniques.”²¹

A vast body of legal authority assumes that Appraisal Districts are required to annually appraise property, but no Constitutional or statutory provisions explicitly state that Appraisal Districts are required to conduct annual appraisals.

Texas Tax Code Section 25.19 pertains to the notice of appraised value that the Chief Appraiser in each County Appraisal District is required to send to property owners. Texas Tax Code Section 25.19 states,

“(a) By April 1 or as soon thereafter as practicable if the property is a single-family residence that qualifies for an exemption under Section 11.13, or by May 1 or as soon thereafter as practicable in connection with any other property, the chief appraiser shall deliver a clear and

¹⁸ Texas Senate Research Center, HB 438 Engrossed Version Bill Analysis, available at <http://www.legis.state.tx.us/tlodocs/80R/analysis/html/HB00438E.htm>, last accessed August 27, 2008.

¹⁹ Tex. Tax Code, Section 6.01(b).

²⁰ Tex. Tax Code, Section 23.01 (a), as amended.

²¹ Tex. Tax Code, Section 23.01 (b), as amended.

understandable written notice to a property owner of the appraised value of the property owner's property if:

- (1) the appraised value of the property is greater than it was **in the preceding year**;
- (2) the appraised value of the property is greater than the value rendered by the property owner; or
- (3) the property was not on the appraisal roll **in the preceding year**.²² (*emphasis added*).

In Attorney General Opinion GA-0283, your office summarized the appraisal process stating, "Except as chapter 23 of the Tax Code permits, the **appraisal district annually must appraise** taxable property "at its market value as of January 1."²³ (*emphasis added*).

In Texas Attorney General Opinion Number DM-94, again summarizing the appraisal process, one of your predecessors stated, "Pursuant to chapter 26 of the code, each of the state's taxing units, including counties, **annually must appraise** and assess all property located within the boundaries of the taxing unit for purposes of ad valorem taxation. As part of the annual process, a county's chief appraiser compiles appraisal records listing, among other items, the names of real property owners, the appraised value of each piece of real property, and the kind of partial exemption, if any, the owner is entitled to receive."²⁴ (*emphasis added*).

Texas Courts have also read an annual appraisal requirement into the statutes, "Stuckey Diamonds, Inc. is a manufacturer and wholesaler of jewelry in Houston. Its inventory is **subject to annual appraisal** and assessment for business personal property taxes."²⁵ (*emphasis added*).

In light of the body of law that assumes an annual appraisal requirement, in practice, does Section 23.23 allow for anything other than an annual appraisal by a County Appraisal District? Are the voter-approved changes to Tax Code Section 23.23 in conflict with the 23.01 requirement that property be appraised at its value as of January 1 of each year?

What legal effect, if any do the changes to 23.23 and the possibility of once-every-three-year appraisals do to the body of law that presumes an annual appraisal?

²² Tex. Tax Code, Section 25.19 (a), Amended by Acts 2007, 80th Leg., R.S., Ch. 1106, § 1, eff. January 1, 2008.

²³ Tex. Att'y Gen. Op. No. GA-0283 at 1 (2004), citing Tex. Tax Code, Section 23.01 (a) and Harris County Appraisal Dist. v. Bradford Realty, 919 S.W.2d 131, 133 (Tex. App.—Houston [14th Dist.] 1994, no writ) (summarizing the appraisal process).

²⁴ Tex. Att'y Gen. Op. No. DM-94 (1992), citing 69 TEX. JUR. 3d Taxation Sections 248-49, 347 (1989); 34 T.A.C. Sect. 155.4(b).

²⁵ Stuckey Diamonds v. Harris County Appraisal Dist., 93 S.W.3d 212, 213 (Tex. App. 2002), citing TEX. TAX CODE § 6.01(a).

4. How would once every three-year appraisals affect the annual Property Value Study and the state education funds to school districts that are dispersed using formulae based upon the results of the property value study?

The Comptroller is required to annually assess the total taxable property value of property in each school district by Government Code Section 403.302 ("Property Value Study or PVS"). The stated purpose of this Study is "to ensure equity among taxpayers in the burden of school district taxes and among school districts in the distribution of state financial aid for public education by providing for uniformity in local property appraisal practices and procedures and in the determination of property values for schools in order to distribute state funding equitably."²⁶ A secondary purpose of the PVS is to "provide taxpayers, school districts, appraisal districts, and the Legislature with measures of Appraisal District performance."²⁷

The PVS is a study conducted by the Comptroller's Property Tax Division using sampling and other techniques prescribed by the legislature to help the Comptroller make their own determination of total taxable property values.

Appraisal Districts and School Districts face possible repercussions if the Comptroller finds the local value determination by the Appraisal District invalid.

Appraisal Districts

If a school district's total taxable property value is found invalid, the statute provides for the comptroller to conduct an appraisal standards review of the appraisal District's appraisal methodology. Appraisal Districts have a year to implement recommendations of the appraisal standards review or else the Appraisal District faces sanctions including possible take over by an appointed board of conservators appointed by the District Court Judges in the Appraisal District.²⁸

School Districts

School Districts face possible loss of funding if their County Appraisal District deviates from the comptroller's PVS determination of total taxable property value in the District by more than a 5% of margin of error.

The Comptroller is required to certify total taxable property values in each school district. State financial aid to school districts is allocated based upon the state equalized wealth described in Chapter 41 of the Education Code. The Comptroller's publication,

²⁶ Tex. Gov't Code, Section 403.301.

²⁷ Texas Comptroller of Public Accounts, *The Property Value Study and How to Protest*, p. 1. January, 2008 available at, <http://www.window.state.tx.us/taxinfo/proptax/protest07/96-304-07.pdf>, last accessed August 28, 2008. (2008).

²⁸ Tex. Tax Code, Section 5.102 (d).

"The Property Value Study and How to Protest," utilizes a helpful example to illustrate the purpose of the PVS:

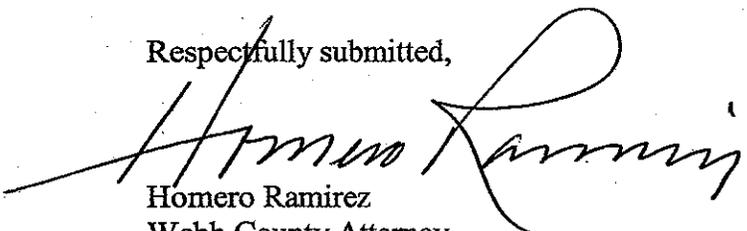
If the state were to rely solely on the values set by the 253 Texas appraisal districts, inequitable school funding could result in some school districts. For example, assume that two school districts—school district A and school district B—are identical in every respect, except that the appraisal district for school district B does a better job appraising property than the appraisal district for school district A. Appraisal districts are required to appraise most property at market value. If the appraisal roll values in school district A are at 75 percent of market value, while the appraisal roll values in school district B are at 100 percent of market value, it would seem that school district A has less taxable property value. As a result, more state funding would flow to school district A, even though the two districts have the same number of students, the same taxable property value and are alike in every way.²⁹

Given that the Comptroller must annually assess Appraisal District performance and certify total property values in a school district and school districts are subject to loss of state aid if the comptroller finds in the PVS that local appraisal districts are undervaluing property, does a once-every-three years appraisal invalidate or otherwise affect the Comptroller's performance of the Property Value Study and the disbursement of Education Code Chapter 41 state equalization wealth funding?

CONCLUSION

I respectfully submit the foregoing questions for your consideration and await for your office to issue its opinion at your earliest convenience.

Respectfully submitted,



Homero Ramirez
Webb County Attorney

²⁹ Id at page 5.