



COMMITTEE ON PUBLIC EDUCATION
TEXAS HOUSE OF REPRESENTATIVES

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OPINION COMMITTEE

November 6, 2009

FILE # ML-46244-09
I.D. # 46244

The Honorable Greg Abbott
Office of the Attorney General
PO Box 12548
Austin, Texas 78711-2548

RQ-0839-GA

RE: Questions on Section 26.08, Texas Tax Code

Dear General Abbott:

I am writing to seek your advice regarding several questions that have been brought to my attention under the "rollback" statute applicable to Texas school districts, Section 26.08 of the Texas Tax Code. Attached is a letter from Magnolia Independent School District raising the first two questions.

My first question involves Subsection (a) of Section 26.08. That subsection exempts from a rollback election a tax rate "necessary to respond to a disaster, including a tornado, hurricane, flood, or other calamity, but not including a drought, that has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located...for the year following the year in which the disaster occurs". Must a school district hold an election to approve a rate previously adopted under subsection (a)'s disaster exception in a year following a rate set pursuant to that exception?

My second question involves the nature of the tax rate that serves as a trigger for an election under Section 26.08. As you know, the calculation of a rollback rate in subsection (n) involves a sum of maintenance taxes based on the district's tax rate in 2005, plus an additional \$0.04, plus any increment of taxation previously approved at an election, plus the district's "current debt rate" for bonds. However, the requirement to hold an election in subsection (a) applies to the "district's rollback tax rate", which appears to be the sum of the different maintenance tax rates plus any tax for the payment of bonds. Legislators have understood that the general reference to a total tax rate in subsection (a) does not override the more specific components of the rollback

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rate calculated in subsection (n). Subsection (a) puts a single tax rate to voter approval because the whole rate must be adopted or rejected; it was not intended to allow a school district to mix the components after making the calculation in subsection (n). May a district, having computed a rollback limit as a sum of those different rates under subsection (n), set different maintenance and debt rates from that calculation without an election, so long as the total tax rate does not exceed the rollback limit?

My third question involves the discretion of a school district board of trustees in setting a tax rate following an election. Subsection 26.08(c) provides that, following an affirmative vote in the rollback election, "the tax rate for the current year is the tax rate that was adopted by the governing body." That provision appears to be unclear as to whether the school district board of trustees is required to adopt the rollback rate approved by the voters, or could instead choose to adopt a lower tax rate. May a school district board of trustees adopt a rate lower than the rate authorized in a rollback election?

My fourth question is the effect of a voter authorization to set a tax rate under Section 26.08 and the rollback tax rate for subsequent years. Subsection 26.08(n)(2)(A) of the Tax Code includes in a rollback limit calculation "the rate that is equal to the sum of the differences for the 2006 and each subsequent tax year between the adopted tax rate of the district for that year if the rate was approved at an election under this section and the rollback tax rate of the district for that year". However, Subsection (n) provides for two alternative calculations in subsections (n)(2)(A) and (n)(2)(B), directing the district to a limit that is the lesser of the two. If the voters of a school district approve a rollback election, is the district permanently entitled to the additional increment of taxing authority and, if so, is that entitlement constrained by the alternative calculation under (n)(2)(B)?

My final question involves the appropriate tax roll to use in calculating a rollback limit before the district has received a certified taxable property appraisal roll. Some districts have found that the estimated appraisal roll declines substantially when a certified roll is received and would prefer to use a projected amount more in line with historical experience. May a district calculate its rollback limit based on a district-generated projection of taxable value if the district has not received a certified taxable property appraisal roll?

Thank you for your consideration of these requests. Should you require any further information, please feel free to contact me.

Sincerely,



Rob Eissler, Chair
House Committee on Public Education



MAGNOLIA INDEPENDENT SCHOOL DISTRICT

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TODD STEPHENS
Superintendent
281-356-3571

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Assistant Superintendent
281-356-3571

October 13, 2009

Dear Rob,

Thanks for listening to our concerns about these two Truths in Taxation questions. Magnolia ISD would like to request that you seek an Attorney General Opinion in your capacity as Chairman of the Public Education Committee regarding two public school finance questions.

The first question relates to Disaster Relief allowed under truth in taxation for school Districts in counties declared as disaster areas, the year following the disaster. Magnolia ISD took advantage of this provision and raised the M&O rate \$.05 from \$1.04 to \$1.09 for the 2009-2010 tax year.

Disaster. School districts are not required to ratify their tax rates when responding to a disaster. No election is called if the school district is spending increased revenue to respond to a disaster for the year following the year in which the disaster occurred. Disasters include tornadoes, hurricanes, floods or other similar events that affect the school district. The law excludes drought. For these purposes, a disaster exists only if the governor requests federal disaster assistance for the area.

MISD requests an Attorney General Opinion as to whether a District's ability to not ratify its tax rate above \$1.04 M&O rate under this disaster provision is limited to only the year following the disaster.

Our second tax rate question involves an emerging debate in school finance circles. Currently, the accepted interpretation of Truth in Taxation involving Tax Ratification Elections requires that Districts hold a TRE in order to set an M&O rate anywhere above the \$1.04 rate up to \$1.17. This interpretation seems to disregard the automatic rollback election procedures described in Truth in Taxation which uses the combined M&O and I&S rollback rate calculation to determine whether an election must take place to ratify a tax rate above the rollback rate.

§ 26.08. ELECTION TO RATIFY SCHOOL TAXES. (a) If the governing body of a school district adopts a tax rate that exceeds the district's rollback tax rate, the registered voters of the district at an election held for that purpose must determine whether to approve the adopted tax rate.

MISD requests an Attorney General Opinion as to whether a District may set a tax rate, without a TRE, which would include an M&O rate above \$1.04, with an overall tax rate not exceeding the calculated rollback rate for that year.

Please know that I appreciate your support of Magnolia ISD as we strive to be the best district in the state of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Stephens', written over a light blue horizontal line.

Todd Stephens, Ph.D.
Superintendent of Schools
Magnolia ISD

cc: Magnolia ISD Board of Trustees