



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2020

The Honorable Matthew A. Mills
Hood County Attorney
1200 West Pearl Street
Granbury, Texas 76048

Opinion No. KP-0287

Re: Voting entitlement of a taxing unit in the
election of an appraisal district's board of directors
under Tax Code section 6.03(d) (RQ-0299-KP)

Dear Mr. Mills:

You ask four questions about the voting entitlement of a taxing unit in an appraisal district's election for its board of directors under Tax Code section 6.03(d).¹

Tax Code section 6.03 provides that an appraisal district is governed by a board of five directors appointed by the taxing units that participate in the district. TEX. TAX CODE § 6.03(a); *see also id.* § 6.03(c)–(k) (providing the process for the appointment of directors by the participating taxing units). The number of votes each taxing unit has—or its voting entitlement—is determined by a mathematical equation utilizing the taxing unit's relative percentage of the overall tax levy by all taxing units in the appraisal district and the number of director positions to yield a total number of votes for each taxing entity. *Id.* § 6.03(d); *see* Request Letter at 2 (describing the section 6.03 voting entitlement as the statutory default method). The election process occurs from October through December of each odd-numbered year to determine which board candidates will be appointed to terms commencing on January 1. TEX. TAX CODE § 6.03(g)–(k). The appointed directors “serve two-year terms beginning on January 1 of even-numbered years.” *Id.* § 6.03(b). The other Tax Code section relevant to your question, section 6.031, authorizes the appraisal district board or the participating taxing units to change the method or procedure of board member appointment. *Id.* § 6.031(a)–(g); *see id.* § 6.031(b) (requiring adoption by at least three-fourths of the taxing units and invalidating a change “if it reduces the voting entitlement of one or more taxing units that do not adopt the resolution” as specified). And yet another Tax Code provision, section 6.034, authorizes the participating taxing units to create staggered terms for the directors. *Id.* § 6.034(a)–(i); *see id.* § 6.034(e) (providing for annual elections after implementation of staggered terms).

You tell us the Hood County Appraisal District's (“District” or “CAD”) board resolved in 1988 to change the method of appointing its members, as allowed by section 6.031, from the section 6.03 statutory default method to a “one entity/one vote” method and has continued to use that method since 1988. Request Letter at 4 (clarifying that “each taxing entity entitled to vote has

¹Letter from Honorable Matthew A. Mills, Hood Cty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 8–9 (Aug. 1, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

had equal power in determining the CAD Board despite significant differences in the relative amount of taxes levied by each entity”). In 1988, the District had five taxing unit members, but now it has eleven taxing units. *Id.* You tell us about the enactment of House Bill 1010 in 2007 and describe it as appearing to allow only the section 6.03 statutory default method to determine the voting entitlement as of September 1, 2007. *Id.* at 6. You also explain that notwithstanding House Bill 1010, one of the original five taxing units rescinded approval of its 1988 resolution providing for the one entity/one vote method to determine voting entitlement. *Id.* at 7. You explain further that, if effective, the rescission reduces that taxing unit’s voting entitlement below the required threshold. *Id.* at 8. In this context, you ask four questions relating to the voting entitlement required after House Bill 1010. *See id.* at 8–9.

Your first question asks whether House Bill 1010 invalidated the 1988 resolution. *Id.* at 8. House Bill 1010 changed the operation of appraisal districts in Texas by requiring all appraisal districts to align with county boundaries. *See* Act of May 17, 2007, 80th Leg., R.S., ch. 648, § 1, 2007 Tex. Gen. Laws 1223, 1223–24 (“H.B. 1010”) (codified as TEX. TAX CODE § 6.02(a)). Prior to its enactment, a taxing unit extending into two or more counties could choose to participate in only one appraisal district. *See* Act of Apr. 22, 1997, 75th Leg., R.S., ch. 165, § 6.72, sec. 6.02(b), 1997 Tex. Gen. Laws 327, 372 (amended by H.B. 1010, § 1); *see also* ENROLLED BILL SUMMARY, Tex. H.B. 1010, 80th Leg., R.S. (2007) at 1. As a result, the appraisal district would extend its boundaries beyond its own county to the extent of the taxing unit’s boundaries in the other county. ENROLLED BILL SUMMARY, Tex. H.B. 1010, 80th Leg., R.S. (2007) at 1. This caused confusion and challenges for appraisal districts and taxpayers alike, and the Legislature sought to rectify the problem with House Bill 1010. HOUSE RESEARCH ORG., BILL ANALYSIS, Tex. H.B. 1010, 80th Leg., R.S. (2007) at 3.

In changing the landscape of appraisal district operations, House Bill 1010 provided several provisions to transition to the new approach. *See* H.B. 1010, § 6. We look to the transition provisions in sections 6(b) and 6(c) to address your first question. Transition section 6(b) of House Bill 1010 provides that

[t]he term of each appraisal district director in an appraisal district described by Section 6.025,² Tax Code, as that law existed immediately before September 1, 2007, serving a staggered term that but for this subsection would expire after January 1, 2008, *expires* on January 1, 2008. The appraisal district board of directors shall fill the vacant directorships as soon as practicable after January 1, 2008, as provided by Section 6.03(*l*), Tax Code.

H.B. 1010, § 6(b) (emphasis and footnote added). Briefing submitted by the District in connection with your request posits that transition section 6(b) preserves the staggering of board of director terms that may have been implemented by an appraisal district under Tax Code section 6.031 and shows that the “Legislature intended to keep the existing staggered-term elections and the method

²Section 6.025 provided the joint procedures for overlapping appraisal districts. *See* Act of May 12, 1995, 74th Leg., R.S., ch. 186, § 1, 1995 Tex. Gen. Laws 1914, 1914–15 (amended 1997, 1999, 2003), *repealed by* Act of May 17, 2007, 80th Leg., R.S., ch. 648, § 5(3), 2007 Tex. Gen. Laws 1223, 1224.

of appointing directors under . . . section 6.031.”³ The District avers that transition section 6(b) makes certain positions vacant and provides instructions about how to fill the vacant positions. District Brief at 3. The District also argues that if the Legislature intended to invalidate all existing staggered-term appointments, there would have been no need for transition section 6(b). *Id.* This argument is unavailing.

Transition section 6(b) does not merely make certain board positions vacant. To the contrary, it expires those terms. The language of transition section 6(b) provides that a term which, but for it, “would expire after January 1, 2008, *expires on January 1, 2008.*” H.B. 1010, § 6(b) (emphasis added). To illustrate, consider a hypothetical five-member board with staggered terms. For the years relevant to House Bill 1010, the board comprises two director positions with terms running from January 1, 2007, to January 1, 2009, and three director positions with terms running from January 1, 2008, to January 1, 2010. *See* TEX. TAX CODE §§ 6.03(b) (providing for two-year terms), 6.034(d) (providing for the initial implementation of a staggered board), 6.034(e) (providing for terms to begin January 1). Absent transition section 6(b), the two terms running from January 1, 2007, to January 1, 2009, would expire after January 1, 2008. Under the plain language of transition section 6(b), those positions are not vacant, thereby requiring only the appointment of directors to serve out the existing terms until January 1, 2009. Instead, they are *expired* terms with subsequent terms running from January 1, 2008, to January 1, 2010. *See id.* § 6.03(b) (providing that appraisal directors serve two-year terms). It is the new terms, ending January 1, 2010, which are vacant requiring the appointment of new directors. *See* H.B. 1010, § 6(b) (requiring the appointment of directors as soon as practicable after January 1, 2008). At the conclusion of the transition, all five positions of this illustrative board now have terms that expire on January 1, 2010. Transition section 6(b) effectively terminates a board’s staggered terms implemented prior to House Bill 1010.⁴

In like fashion, transition section 6(c) of House Bill 1010 provides that

[n]otwithstanding section 6.03, Tax Code, a taxing unit is entitled to vote in 2007 for appraisal district directors for terms beginning on January 1, 2008, in each appraisal district in which the taxing unit will participate in 2008 under the law as amended by this Act. The *voting entitlement of each taxing unit entitled to vote for directors in 2007* is determined for each appraisal district by [a specified mathematical formula].

³Letter brief from James R. Evans, Jr., Low Swinney Evans & James, to Honorable Ken Paxton at 3 (Sept. 3, 2019) (hereinafter “District Brief”) (on file with the Op. Comm.).

⁴Directors elected subsequently are likely de facto officers acting under the color of authority. *See Williams v. State*, 588 S.W.2d 593, 595 (Tex. Crim. App. 1979) (describing a de facto officer as “one who acts under color of a known and valid appointment, but has failed to conform to some precedent requirement, as to take the oath, give a bond, or the like” (quotation marks omitted)). As such, their actions are binding because the “law validates the acts of de facto officers as to the public and third persons on the ground that, though not officers de jure, they are in fact officers whose acts public policy requires should be considered valid.” *Plains Common Consol. Sch. Dist. No. 1 v. Hayhurst*, 122 S.W.2d 322, 327 (Tex. App.—Amarillo 1938, no writ).

H.B. 1010, § 6(c). Transition section 6(c) provides the method to determine the voting entitlement of the taxing entities during the transition. Though House Bill 1010's changes relating to the "appraisal of property" apply to the 2008 tax year, transition section 6(c) expressly allows those taxing units that will participate in a new appraisal district as of 2008 to vote in 2007 on the directors for that new appraisal district. *Id.* In our illustrative example, the incoming taxing units could vote for the three director positions with terms running from January 1, 2008, to January 1, 2010. *See* TEX. TAX CODE § 6.03(g), (j), (k) (providing taxing unit voting procedures that run from October through December of the year prior to start of director term). Transition section 6(c) does not preserve or grandfather any alternative voting entitlement method; instead, it expressly provides that for *each taxing unit entitled to vote in 2007* the voting entitlement is determined by a calculation method that is identical to the statutory default method in Tax Code section 6.03 but that incorporates a figure reflecting the county boundaries instead of the appraisal district boundaries. *See* H.B. 1010, § 6(c). The language "notwithstanding section 6.03" provides that this calculation method governs despite any contrary aspect of Tax Code section 6.03. *See State v. Pub. Util. Comm'n*, 110 S.W.3d 580, 586 (Tex. App.—Austin 2003, no pet.) (stating that "the word 'notwithstanding' means 'despite' or 'in spite of'"). Accordingly, transition section 6(c) effectively resets the voting entitlement back to a proportionate figure among the old and new participating taxing entities similar to that of the section 6.03 statutory default method. These transition sections suggest the Legislature intended to shift the taxing units into their new appraisal districts with a degree of operational parity. *See also* H.B. 1010, § 6(f) (providing for the 2008 appraisal district budget to be allocated proportionately to account for the new taxing units).

For these reasons, a court would likely conclude that House Bill 1010 invalidated any previously adopted alternative method for determining the voting entitlement of taxing units in an appraisal district's board election. This conclusion negates the need to address your second and third questions. *See* Request Letter at 8–9. Your fourth question asks whether the annual voting for the appointment of appraisal district directors should now be conducted via the statutory default method in Tax Code section 6.03(d). *Id.* at 9. Given our conclusion to your first question, Tax Code section 6.03(d) determines the voting entitlement for the appointment of appraisal district directors absent action taken under Tax Code section 6.031 subsequent to House Bill 1010 to change the voting method. *See* TEX. TAX CODE §§ 6.031 (authorizing change to voting entitlement), 6.034 (providing procedures to implement staggered terms for directors).

S U M M A R Y

Tax Code section 6.031 authorizes a change to the voting entitlement of taxing units in the appointment of an appraisal district's board of directors. Under the transition provisions of House Bill 1010 from 2007, a court would likely conclude that House Bill 1010 invalidated any previously adopted alternative method for determining that voting entitlement.

The voting entitlement for the appointment of appraisal district directors should be determined by Tax Code section 6.03(d), absent action taken under Tax Code section 6.031 to change that method subsequent to House Bill 1010.

Very truly yours,



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