



Robert Junell
Chairman

Texas House of Representatives
Committee on Appropriations

G.E. (Buddy) West
Vice-Chairman

June 8, 2000

The Honorable John Cornyn
Attorney General
State of Texas
209 West 14th Street
Austin, Texas 78711

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OPINION COMMITTEE

FILE # ML-41469-00

I.D. # 41469

RQ-0245-gc

Re: Question of Concho Valley Council, Inc., Boy Scouts of America to the
Attorney General of Texas

Dear General Cornyn:

The Concho Valley Council, Inc., Boy Scouts of America ("BSA") owns an 8,000 acre ranch in Menard County, Texas. Historically, the Menard County Appraisal District has valued and taxed the ranch based on its productive capacity as "qualified open-space land." The Concho Valley Council, Inc., Boy Scouts of America, believes that their present uses of the ranch duly qualify it for complete exemption from property taxation under Section 11.19, *Property Tax Code*. Assuming that upon BSA's filing an application for exemption that the Menard County Appraisal District is willing to exempt the ranch from taxation under Section 11.19, *Property Tax Code*, the question which I would respectfully propose to your office is:

Would the eligibility of the ranch for exemption from taxation under Section 11.19, *Property Tax Code*, and the granting of such exemption by the Menard County Appraisal District, in and of itself, constitute a change of use under Section 23.55, *Property Tax Code*, such that the "rollback" tax is triggered, even though the ranch continues to be used for farm and ranch purposes?

The remainder of this letter is designed to give you more background information about the Concho Valley Council, Inc., Boy Scouts of America, and its use of the ranch.

FACTS

The Concho Valley Council, Inc., Boy Scouts of America ("BSA"), was chartered as a Texas non-profit corporation in 1935. The activities and purposes of BSA qualify it as a youth development association under Texas Tax Code Ann. §§11.19(d)(Vernon 1992 and Vernon Supp. 1999), hereafter "*Property Tax Code*."

In 1945 Mr. and Mrs. Sol Mayer deeded to BSA a 300 acre tract of land located on the San Saba River in Menard County, Texas. This 300 acre tract was the southernmost part of an 8,407 acre ranch owned by the Mayers and known as the "Brown Ranch." BSA established a Boy Scout camp on this



300 acre tract (the "Boy Scout Camp"). Its historical and present use of the Boy Scout Camp qualifies BSA for an exemption from taxation for this 300 acre tract under §§11.19, *Property Tax Code*.

Upon their deaths, Mr. and Mrs. Mayer devised the remainder of the Brown Ranch (the "Boy Scout Ranch") to BSA "to provide a permanent camp and income for the Concho Valley Council of the Boy Scouts of America and that such income will be used for the improvement, maintenance and operation of Camp Sol Mayer." The Boy Scout Ranch, not the 300 acre Boy Scout Camp, is the subject of this memorandum and question.

For many years BSA has leased the surface of the Boy Scout Ranch (comprising 8,059 acres on the Menard County Appraisal District's tax roll) to area ranchers for livestock grazing and hunting purposes. BSA has also leased the mineral rights and received income from oil and gas production from the Boy Scout Ranch. BSA utilizes the income from the surface and minerals of the Boy Scout Ranch for those uses designated by Mr. and Mrs. Sol Mayer in their wills: "that such income be used for the improvement, maintenance and operation of Camp Sol Mayer."

Since the adoption in 1978 of Tex. Const. Art. VIII, §§1-d-1 (1978, amended 1995) and up until 1998, BSA has traditionally considered that the Boy Scout Ranch was principally devoted to farm and ranch purposes. Therefore, BSA took the position it should be eligible for special agricultural appraisal based on its productive capacity as "qualified open-space land." [See §§23.51(1), *Property Tax Code*.] The Menard County Appraisal District ("MCAD") has historically agreed with BSA's position and valued the Boy Scout Ranch as qualified open-space land or "1-d-1 land" as it is often described.

In 1998 BSA reviewed its uses of the Boy Scout Ranch and compared them to the requirements of §§11.19, *Property Tax Code*. BSA concluded that the leasing of the surface of the Boy Scout Ranch for farm and ranch purposes to persons who are not youth development associations was **incidental to the use of the Boy Scout Ranch by BSA**; and, therefore, the Boy Scout Ranch should be entitled to a complete exemption from taxation under §§11.19, *Property Tax Code*.

Based on this belief, BSA timely made application for exemption of the Boy Scout Ranch under §§11.19 for the 1998 tax year. However, MCAD denied BSA's request for exemption. BSA then appealed the MCAD's denial of its request for exemption to the Appraisal Review Board ("ARB"), but the ARB upheld the MCAD's decision. BSA did not file a lawsuit in District Court to contest the ARB's decision.

In April 1999, BSA again made application for an exemption from taxation for the Boy Scout Ranch under §§11.19. Once again the MCAD denied BSA's request. However, this time BSA was successful in its appeal to the ARB. **On July 13, 1999, the ARB determined that the MCAD records as to the Boy Scout Ranch were incorrect and ordered the MCAD to change the appraisal records to exempt the Boy Scout Ranch in Menard County from taxes.**

Within ten days from the ARB's 7-13-99 Order exempting the Boy Scout Ranch from taxation, the MCAD made a determination that because the Boy Scout Ranch now qualified for exemption under §§11.19, it had ceased to be principally used for agriculture. Therefore, according to the MCAD, a change of use of the land had occurred under §§23.55, *Property Tax Code*. By making this "change of use" determination, the MCAD triggered the "rollback" tax on 1-d-1 land (the Boy Scout Ranch). Although the MCAD knew the Boy Scout Ranch was still heavily used for farm and ranch purposes, the Chief Appraiser decided the "rollback" tax should be imposed simply because BSA had qualified for the §§11.19 exemption by convincing the ARB that the use of the Boy Scout Ranch by others (the agricultural lessee) was **incidental** to use by BSA as a qualified youth development association.

The "rollback" tax is a penalty for taking land out of agricultural production. According to the *Manual for the Appraisal of Agricultural Land*, April 1990 printing - effective March 1998, the "rollback" tax equals the difference between the taxes the owner actually paid in the five years preceding the "change in use" and the taxes the owner would have paid on his property's market value. Moreover, the "rollback" tax requires the owner to pay interest at the annual rate of 7% calculated from the dates on which the differences would have become due.

What the triggering of the "rollback" tax did to BSA is essentially create a one-time liability to MCAD in an amount of not less than 4 to 6 times the amount of property taxes already paid by BSA on the Boy Scout Ranch for the five years prior to the tax year in which the rollback was triggered, plus interest. While no exact figures were calculated, it is estimated that the "rollback" tax on the Boy Scout Ranch would be in excess of several hundred thousand dollars.

On August 23, 1999, BSA appealed the MCAD's "rollback" tax decision to the ARB. After an initial hearing before the ARB wherein the ARB made no final decision and because of the sheer magnitude of the "rollback" tax penalty facing BSA, the Board of Directors of BSA accepted a settlement proposal made by MCAD. In summary, BSA accepted a return to special agricultural appraisal of the Boy Scout Ranch as "qualified open-space land" for 1999 and revoked its application for a complete exemption of the Boy Scout Ranch under §§11.19. In consideration for BSA's acceptance of these terms, the MCAD rescinded its decision to impose the "rollback" tax penalty. This means if BSA decides to ever again seek an exemption for the Boy Scout Ranch under §§11.19, it must start completely over with the application process.

Obviously, BSA has not stopped using the ranch for agricultural production. If it had, the MCAD would not allow a special agricultural appraisal. Moreover, the activities which BSA provides for youth on the Boy Scout Ranch greatly depend on the ranching infrastructure which the agricultural lessee maintains on the property. For example, BSA offers a ranch adventure program for youth during the summer which requires the cooperation of the agricultural lessee in allowing the youth to participate in actual ranching activities and practices. This is just one example, and there are countless others. The main point is the level of intensity of the farm and ranch activities on the Boy Scout Ranch has not decreased over the past twenty to thirty years while youth activities on this property have increased. Instead of these two purposes competing with each other for open space

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on the ranch, the agricultural and youth activities can be characterized as complementary in many respects. Moreover, all of the income from the leasing to others of the Boy Scout Ranch is used for the Boy Scout Camp and ranch programs as directed by Mr. and Mrs. Mayer in their wills.

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QUESTION RESTATED

Therefore, the question becomes: Assuming that (i) the lessee's use of the Boy Scout Ranch is for farm and ranch purposes; and (ii) the lessee's use is incidental to BSA's use of the Boy Scout Ranch such that the Boy Scout Ranch qualifies for exemption under §§11.19, *Property Tax Code*; **does the granting of such exemption to the Boy Scout Ranch, in and of itself, constitute a change of use under §§23.55, *Property Tax Code*, such that the "rollback" tax is triggered?**

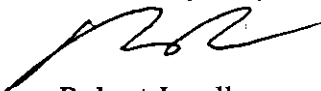
CONCHO VALLEY COUNCIL, INC., BOY SCOUTS OF AMERICA'S POSITION

Based on BSA's reading of the Texas Tax Code Ann. (Vernon 1992 and Vernon Supp. 1999) and the *Manual for the Appraisal of Agricultural Land* (April 1990 printing - effective March 1998)[which manual has been adopted by the Comptroller under its rule-making power found in §§23.41(b) and §§23.52(d), *Property Tax Code*], BSA believes that no statutory change of use occurs under §§23.55 so long as the Boy Scout Ranch is used for farm and ranch purposes, even though such farm and ranch purposes be reduced somewhat, become incidental to youth development activities, or no longer equal the degree of intensity defined as "principally used for agriculture."

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Thank you for your consideration of my request for your opinion on this matter. Please contact me if you desire more explanation or a clarification of any aspect of this letter.

Yours very truly,



Robert Junell

Chair