

**TEXAS HIGHER EDUCATION  
COORDINATING BOARD**

P.O. Box 12788 Austin, Texas 78711



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OPINION COMMITTEE

*RQ-0300-JC*

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The Honorable John Cornyn  
Attorney General of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

FILE # mk 41719-00  
I.D. # 41719

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Re: Request for Attorney General's Opinion

Dear General Cornyn:

The Board of Trustees of the El Paso County Community College District has asked the Coordinating Board to submit a request for an Attorney General's opinion. The issue that the College wishes to resolve is:

Don W. Brown  
COMMISSIONER  
OF HIGHER EDUCATION

Whether a community college district may set a lower tax rate under Tex. Tax Code §26.05 for the present tax year after previously having set the annual tax rate under this section, and after having caused individual taxes to be calculated and the billing statements mailed to the taxpayers.

512/483-6101  
Fax 512/483-6127

Web site:  
<http://www.thechb.state.tx.us>

The request from the President of the College, along with a letter brief prepared by the College's attorneys, are attached for your information. These documents, I believe, thoroughly discuss the applicable law.

An expedited opinion is requested because the College has a November 28, 2000, deadline for submitting the required signatures for an election to repeal the tax increase. Your prompt attention to this question will be appreciated.

Cordially,

Don W. Brown  
Commissioner of Higher Education

Attachments: Letter from Ramon Dominguez to Don W. Brown  
Letter from Edward W. Dunbar to Ramon Dominguez

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Ramon Dominguez, Ph.D.  
President

10/19/00 Xc: Blenda  
Rogers  
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TEXAS HIGH EDUCATION  
COORDINATING BOARD  
Commissioner To JAN G

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October 16, 2000

Prepare My Reply	For info
Recommend Action	File
<u>Please Handle</u>	<u>Your Reply</u>
<u>Inform Me Promptly</u>	<u>Routinely</u>

Dr. Don W. Brown  
Commissioner of Higher Education  
Texas Higher Education Coordinating Board  
1200 E. Anderson Lane  
Austin, TX 78752

(Please read Dr. Brown's  
or acknowledge  
ASAP)  
Danks

Dear Dr. Brown:

The Board of Trustees of the El Paso County Community College District wishes to request an opinion from the Texas Attorney General regarding the College's 2000 ad valorem tax rate. It is my understanding that one of the proper methods of making such a request is through your office.

I would be most appreciative if you would review the enclosed letter and forward it, together with a request for an opinion, to the Attorney General. The College has rarely sought an opinion, and if additional procedures are necessary please let me know.

Your assistance in this matter is sincerely appreciated!

Respectfully,

Ramon Dominguez  
President

RD/mo

C:\DOMINGUEZ\LETTERS-MEMOS\TAX RATE - CB.ED

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**EDWARD W. DUNBAR**  
5 YEAR CERTIFIED  
CIVIL APPELLATE LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

**ALBERT ARMENDARIZ, SR.**  
OF COUNSEL  
5th DISTRICT  
EL PASO, TEXAS 79901  
915/787-5077 FAX

October 16, 2000

FEDERAL EXPRESS

Dr. Don W. Brown  
Commissioner of Higher Education  
Texas Coordinating Board  
of Higher Education  
1200 E. Anderson Lane  
Austin, Texas 78752

Dear Dr. Brown:

The Board of Trustees of the El Paso County Community College District (the College) respectfully requests that an Attorney General's opinion be obtained under the authority of Section 402.042 of the Texas Government Code. The issue the College wishes to resolve is:

Whether a community college district may set a lower tax rate under Tex. Tax Code §26.05 for the present tax year after previously having set the annual tax rate under this section, and after having caused individual taxes to be calculated and the billing statements mailed to the taxpayers.

The College offers the following comments and background information in regard to the foregoing question. The governing board of a junior or community college district is required to annually assess the taxable property in the district for ad valorem taxation. Tex. Educ. Code §130.121(a). The board may contract with the city or county tax assessor to assess the property and collect the taxes. Tex. Educ. Code §130.121(b). The governing board is authorized to levy and pledge ad valorem taxes for the maintenance of the college. Tex. Educ. Code §130.122(a).

Letter to Dr. Don W. Brown  
October 16, 2000  
Page Two of Five

The College has contracted with the City/County of El Paso Consolidated Tax Office to access and collect its taxes. On July 28, 2000 the College received the certified tax roll. Governing bodies of all taxing units must adopt a tax rate before the later of September 30th or the 60th day after the receipt of the certified appraisal roll. Tax. Tax Code §26.05(a). Taxes may not be imposed until a tax rate is adopted. Tax. Tax Code §26.05(b). The College timely set its tax rate on August 30, 2000.

Because the rollback tax rate was exceeded, Tax. Tax Code §26.05(d), the College published the proper notice and conducted a public hearing in accordance with Section 26.06 of the Code before the final vote approving the increase.

A group of taxpayers is currently circulating a petition to require an election to determine if the tax rate should be reduced. On October 11, 2000 the College's governing board considered an agenda item for the College itself to voluntarily rollback taxes. Because of the uncertainty as to its authority to so act, the Board of Trustees voted to seek an attorney general's opinion.

In reviewing this issue, the College has examined the Texas Constitution, the Tax Code, and several attorney general's opinions. Section 26.05 of the Tax Code is silent as to amendments or alterations to the tax rate after its timely adoption. In the case at hand, all procedural requirements were satisfied and the adopted tax rate was forwarded to the Tax Assessor/Collector. Taxes were calculated and statements entitled "2000 El Paso Consolidated Tax Bill " were mailed to taxpayers. The College is reliably informed that this is an ongoing process, and that not all statements have been mailed. Some 80,000 statements had been mailed by the date of the Board of Trustees' consideration of the agenda item to reduce the tax rate.

The consolidated tax bills state that, "Taxes are due upon receipt and must be paid by Wednesday, January 31, 2001." Penalties and interest apply thereafter.

Letter to Dr. Don W. Brown  
October 16, 2000  
Page Three of Five

The most instructive Attorney General's opinion appears to be JM-893(1988). This opinion dealt with the prospective exemption of certain property, to-wit: recreational boats. The Texas Legislature in 1987 had permitted the various taxing entities, at their option, to exempt this property from taxation. The question arose as to whether boats already on the tax rolls could be exempted.

The Attorney General concluded that the exemption turned on whether the taxing unit had certified its tax rolls at the time of the effective date of the legislation. Stated differently, a boat owner avoided taxation if the tax rolls had not yet been certified. Had a boat been included in the certified rolls, the tax had to be paid.

This determination was based on principles that seem applicable to the College's taxation question. The first principle deals with the application of a tax exemption after the tax liability has matured. The Texas Constitution provides that:

The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years.

Tax. Const. art. III, §55.

According to JM-893, once a tax becomes a liability, this constitutional provision makes the liability irrevocable and it cannot be extinguished by repealing the statute that enacted it. Sloan v. Calvert, 497 S.W.2d 125 (Tax. Civ. App - Austin 1973, no writ). Moreover, an additional constitutional article prohibits the legislature from releasing the inhabitants of any county or city from the payment of taxes levied for state or county purposes unless there is a great public calamity. Tex. Const. art. VIII, §10.

Letter to Dr. Don W. Brown  
October 16, 2000  
Page Four of Five

Another provision of the Texas Constitution prevents the State from making or authorizing a grant of public funds to any person or entity in the absence of a public purpose or consideration. Tex. Const. art. III, §51. Still another provision bars the legislature from authorizing political subdivisions to grant public money to individuals or corporations. Tex. Const. art. III, §52.

The test, under the Texas Constitution, is whether the tax liability has accrued or matured. According to our reading of the Texas Attorney General's opinion, if the liability has become fixed, it cannot be reduced or exempted under the above sections of the Constitution. Under the Tax Code, as applied in JM-893, "a taxpayer's liability is fixed when a taxing unit has performed those requirements provided for in Chapter 26 of the [Texas Tax] code." The question under this opinion is whether the tax liability of College taxpayers now has become fixed. It appears that it indeed has become due and payable.

Were it not for a subsequent letter opinion, LO-88-116, the answer to the above question would seem clear: taxes could not be altered after assessment and levy. However, in LO-88-116 the City of Houston asked the following question:

Does Attorney General Opinion JM-893 (1988) forbid the city from changing the amount of the Seniors and Disabled Exemptions if the city is willing to unwind the process followed for setting the tax rate and begin again, starting with receipt of a new certified property roll?

The response to this question was that JM-893 did not address the situation presented by the City of Houston, nor did the opinion speak to "unwinding the process" by receiving a new certified property roll and to "begin again."

The logistics of such an endeavor are not spelled out, but, at a minimum, the timely satisfaction of Chapter 26 of the Tax Code cannot be met in that the deadlines already have passed in the case of the El Paso Community College. LO-88-116 continued to recognize that a taxpayer's liability is fixed when a taxing unit has performed the requirements provided for in Chapter 26.

Letter to Dr. Don W. Brown  
October 16, 2000  
Page Five of Five

The letter opinion, nonetheless, does present a possible alternative to the application of the decision in JM-893, and clarification is hereby sought.

Consequently, the subsidiary question regarding the College is whether it may now "unwind the process" and reduce the tax rate. Please understand that both this issue and the primary question stated above are predicated on the voluntary nature of a reduced tax rate, and the legality of proceeding with such a process. The College continues to recognize the validity of the rollback procedure authorized by the Tax Code. Tax. Tax Code §26.07. An election to repeal the tax increase clearly could result in lower taxes, and the College's question, reduced to its simplest terms, is whether the College may lower taxes without such an election.

In that the required signatures for an election to repeal the College's tax increase must be submitted by November 28, 2000, respectful request is made for expedited consideration by the Attorney General.

Your courtesy and cooperation, and that of the Attorney General, are very much appreciated. Should you have any questions or comments please do not hesitate to call upon me.

Sincerely,

DUNBAR, ARMENDARIZ, CROWLEY  
& HEGEMAN, L.L.P.

By: 

EDWARD W. DUNBAR

EWD/cg  
cc: Dr. Ramon Dominguez  
Board of Trustees