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RQ-0352-JC

February 21, 2001

Honorable John Cornyn
Office of the Attorney General
PO Box 12548
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RECEIVED
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OPINION COMMITTEE

FILE # AL-41892-01
I.D. # 41892

Certified Mail, Return Receipt Requested

Re: Request for Texas Attorney General's Opinion

Dear General Cornyn,

The Texas Constitution, Article III, Section 48-e, permits the Legislature to enact laws providing for the establishment and creation of Emergency Service Districts, **"and to authorize the commissioners courts of participating counties to levy a tax on the ad valorem property situated in said districts not to exceed Ten Cents (10 cents) on the One Hundred Dollars (\$100.00) valuation for the support thereof;** provided that no tax shall be levied in support of said districts until approved by a vote of the qualified voters residing therein. Such a district may provide emergency medical services, emergency ambulance services, rural fire prevention and control services, or other emergency services authorized by the Legislature." (Emphasis supplied)

Texas Health & Safety Code, Section 776.019, prescribes the election which must be held upon the successful petition to a county commissioners court for creation of an Emergency Service District, and provides, *inter alia*, that

- (a) On the granting of a petition, the **commissioners court shall order an election to confirm the district's creation and authorize the levy of a tax not to exceed:**
1. **10 cents on each \$100 of the taxable value of property taxable by the district; or**
 2. **two cents on each \$100 of the taxable value of property taxable by the district if any area in the district is also included in a rural fire prevention district.** (Emphasis supplied)

There is currently pending before the Llano County Commissioners Court a petition for the creation of a county-wide Emergency Service District. Currently located within the county are two rural fire prevention districts, created pursuant to Texas Constitution, Article III, Section 48-e, and Texas Health & Safety Code Section 794.071, *et seq.*, which encompass separate areas within the county, but which do not cover the entire county. Each of these fire prevention districts currently has taxing authority up to three cents on each \$100 of the taxable value of property taxable within their respective boundaries, and both would be included within the proposed Emergency Service District.

This is to respectfully request an official Texas Attorney General's Opinion responding to the following questions:

1. Does the statutory language of Section 776.019 (a)(2) **permit** a county commissioners court to order an election limiting the taxing authority of an Emergency Service District to two cents on each \$100 of the taxable value of property taxable by the district, or does it **require** the commissioners court to do so?
2. In either case, would the taxable property subject to the two cent limitation be only that lying within the rural fire prevention district, or would this limitation apply to all property within a proposed county-wide Emergency Service District?
3. If the statutory language of Section 776.019 **either permits or requires** a county commissioners court to order an election limiting the taxing authority of an Emergency Service District to two cents on each \$100 of the taxable value of **any** property taxable by the district, is the provision unconstitutional in that it conflicts with Texas Constitution, Article III, Section 48-e, which appears to limit the Legislature's authority only to authorizing affected commissioners courts to impose a tax "not to exceed Ten Cents (10 cents) on the One Hundred Dollars (\$100.00) valuation?"

Attorney General's Opinion JM-1010 is the closest opinion I could find addressing my request but it is still not exactly on point.

JM-1010 similarly addresses question number one above wherein the question was asked "may the commissioners court limit the amount of the tax which may be levied in support of an Emergency Service District in the order calling the election and in the ballot proposition to be submitted to the voters to confirm the organization of said district. For example, may the commissioners court set a maximum rate of six cents per \$100 valuation?" Your office opined that the legislature did not intend for a commissioners court to be able to ask the voters to approve a maximum taxing authority of less than ten cents on the \$100 valuation. Therefore, the commissioners court must ask the voters to approve a district with a maximum taxing authority of ten cents on the \$100 valuation. The commissioners court are still given the authority in a particular year to levy a tax less than the maximum tax authorized in the election. Based on this opinion, I believe that the Llano Commissioners Court is required to order an election to authorize the levy of a tax not to exceed two cents on the \$100 valuation.

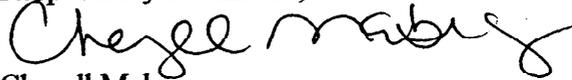
Further, JM-1010 the question was posed; "what is the maximum ad valorem tax rate which may be levied in support of an emergency services district whose boundaries overlap or are conterminous with a rural fire district?" Your office cited V.T.C.S. art 2351a-8, Section 33 (now in regards to Llano County's population, Health and Safety Code Section 776.019) and stated if any area included within the boundaries of a rural fire prevention district is included within the boundaries of an emergency services district, the commissioners court shall call an election to confirm the organization and authorize the levy of an ad valorem tax in an amount not to exceed two cents of the \$100 valuation.

This opinion does not consider the situation posed in my question number two above and I feel Health and Safety Code Section 776.019 is very ambiguous, subject to various interpretations that will affect the Llano County Commissioners Court in deciding if the organization of an Emergency Services District is feasible and practicable and will be conducive to the public safety, welfare, health and convenience of our citizens residing in the proposed district, being the entire county.

Because this matter is scheduled for hearing on March 20, 2001 before the Llano County Commissioners Court, this is also to request an expedited response to this opinion request. If any additional information is required, please contact me immediately.

Thank you for your assistance and prompt response.

Respectfully Submitted,



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cc: Judge J.P. Dodgen
Commissioner Bill Kinney
Commissioner Keith Faulkner
Commissioner Duane Stueven
Commissioner Leon Tucker
Kevin Smith, County Auditor