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RQ-0562-88

May 3, 2002

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

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

FILE # ML-42662-02

I.D. # 42662

2864

Re: Whether the "recapture" provisions of the Texas Education Code Chapter 41, apply to that portion of local property tax revenues that are attributable to a public school district's tax revenue rate for maintenance and operations in excess of \$1.50 per \$100 valuation.

Dear General Cornyn:

Please consider this letter as a request for your opinion on the operation of one very narrow aspect of the "recapture" provisions of the Texas Education Code, Chapter 41. This specific issue is not the subject of any pending litigation. My specific question is whether the "recapture" provisions of Chapter 41 apply to that portion of a public school district's local property tax revenues that are attributable to the application by the district of a tax rate for maintenance and operations in excess of \$1.50 per \$100 valuation. For purposes of this request, I assume that, for any district with a wealth per student in excess of the maximum equalized wealth level permitted under Chapter 41, excess local tax revenues raised by the first \$1.50 of the districts tax rate for maintenance and operations would be subject to "recapture."

The Deer Park Independent School District previously has been authorized by its voters to levy a maintenance and operations tax in excess of \$1.50 pursuant to the provisions of the Texas Education Code Auxiliary Laws, Article 2784g, which permits school districts in counties with a population in excess of 700,000, according to the most recent federal census, to set a maintenance and operations tax rate of up to \$2.00. As you are aware, Article 2784g and other similar statutes were not repealed at the time the Texas Education Code was created in 1969, and continue to provide alternatives for some public school districts to the general provisions of the Code that apply to most districts.

In 1995, the Supreme Court of Texas specifically considered whether these statutes posed a threat to the efficiency of the Texas public school finance system. In Edgewood Independent School District v. Meno, 917 S.W. 2d 717, 713 (1995) (hereinafter referred to as Edgewood IV), the Court stated that "(t)hese laws pose no threat to the constitutionality of Senate Bill 7. Once all districts are provided with sufficient revenue to satisfy the requirements of a general diffusion of knowledge, allowing districts to tax at a rate in excess of \$1.50 creates no constitutional issue. Districts that

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choose to tax themselves at a higher rate under these laws are, under this record, simply supplementing an already efficient system.”

It is my understanding that the Deer Park Independent School District is the only district whose voters have authorized it to operate under the provisions of Article 2784g, that also has wealth per student in excess for the maximum equalized wealth level permitted in accordance with the Texas Education Code, Section 41.002. Consequently, to the best of my knowledge, Deer park ISD is the only district in the state that has been authorized by its voters to give a tax rate for maintenance and operations in excess of \$1.50, that is also subject to the “recapture” provisions of the Texas Education Code, Chapter 41.

To date, the Deer Park ISD has not exercised its authority to set a tax rate for maintenance and operations in excess of \$1.50. However, because of its commitment to provide a quality educational program for its students, combined with concerns about the state’s public school finance system that are affecting many district, Deer Park ISD is considering a tax rate in excess of \$1.50 as it prepares its budget for the 2002-2003 school year.

The question has arisen whether the portion of the District’s tax revenues that are attributable to a tax rate in excess of \$1.50 for maintenance and operations is subject to the “recapture” requirements of Chapter 41, or whether the District is authorized to retain all of such revenues for its own programs. Those involved believed that the answer to this question is that the Deer Park ISD is authorized by current law to retain that portion of its tax revenues that are attributable to a tax rate in excess of \$1.50 for maintenance and operations, and that this portion of its tax revenue is not subject to the “recapture” requirements of Chapter 41.

The current Texas public school finance system is only designed to operate to a maximum tax rate of \$1.50 for maintenance and operations, and does not contemplate recapture of that portion of local tax revenue raised at rates in excess of \$1.50. In its description of the system, Edgewood IV states, (t)he yield guarantee applies only to \$0.64 of tax effort beyond the \$0.86 required for Tier 1, so no Tier 2 funds are provided for any effective tax rates exceeding \$1.50.” at 728. In discussing the \$600 gap issue, Edgewood IV states, (a)lthough the Legislature has chosen to equalize funding up to a tax rate of \$1.50, the evidence established that, currently, all districts can attain the funding for a general diffusion of knowledge at a lower tax rate... Thus, our constitutional inquiry must focus on that disparity, rather than on the \$600 gap that occurs at a \$1.50 tax rate.” at 731. Further, in discussing the \$1.50 tax cap and the continuing viability of other laws, such as Article 2784g, Edgewood IV states, “(a)s long as efficiency is maintained, it is not unconstitutional for districts to supplement their programs with local funds, even if such funds are unmatched by state dollars and even if such funds are not subject to statewide recapture.” at 732. All referenced in Edgewood IV and in Chapters 41 and 42 refer to the operation of the current system at tax rates up to \$1.50, not at rates above that level.

It is clear that the current system does not attempt to equalize local tax revenues generated at a tax rate maintenance and operations in excess of \$1.50, that recapture of any such revenue is not necessary to meet the requirements of the Texas Constitution, and that the Supreme Court of Texas recognized that the current system only operates up to tax rates of \$1.50 at the same time that it

affirmed, in Edgewood IV, the continuing viability of Article 2784g. Consequently, if a district and its voters are willing to tax themselves at a rate in excess of \$1.50, the district should be permitted to retain that portion of its tax revenues attributable to the rate in excess of \$1.50, without such revenues being subject to "recapture."

I appreciate your prompt consideration of this opinion request. As previously stated, it does not deal with an issue that is currently subject to litigation, and it is my understanding that it only affects the Deer Park ISD, which is not a party to any litigation concerning the constitutionality of the Texas public school district. A separate question, but one which is not necessary to answer to respond to this opinion request, is whether other school districts located in counties with a population of more than 700,000 may now elect to operate in accordance with the provisions of Article 2784g. If I may provide any additional information to assist with your consideration of this opinion request, please contact me anytime.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Michael Moore", with a large, stylized initial "G" and a trailing comma.

JEB: AP

cc: Senator Mike Jackson