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on Higher Education Governance,  
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Legislative Budget Board



**Judith Zaffirini**  
State Senator, District 21  
President Pro Tempore, 1997

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JAN 15 2014

**OPINION COMMITTEE**

January 9, 2014

FILE # ML-47496-14  
I.D. # 47496

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

**RQ-1179-GA**

Dear General Abbott:

This is to request an opinion pursuant to Section 402.042, Government Code, regarding whether the City of Santa Clara is subject to a rollback election under Section 26.07(a), Tax Code, if the city raises its ad valorem tax rate from the current rate of zero and, if so, how the rollback rate is calculated for purposes of the election.

#### FACTS

Section 26.07(a) of the Tax Code provides that if a city adopts a tax rate that exceeds the "rollback" rate, the qualified voters of the city "by petition may require that an election be held to determine whether or not to reduce the tax rate" to the rollback rate. Under Section 26.04(c)(2) of that code, the rollback rate is determined by multiplying the "effective maintenance and operations rate" by 1.08 and adding the "current debt rate," defined by Section 26.012(4) as a function of the current debt service.

The effective maintenance and operations rate is in turn a function of the "last year's levy." The last year's levy is defined by Section 26.012(13), Tax Code, as the total of "the amount of taxes that would be generated by multiplying the total tax rate adopted in the preceding year...by the total value of property on the appraisal roll," and "the amount of taxes refunded...in the preceding year for tax years before that year."

In 2011 the city council of the City of Santa Clara voted to reduce the ad valorem tax rate from the then-current rate of 0.12 percent to zero for the 2012 tax year. When the council met again in 2012 to consider a new tax rate for 2013, it was unable to obtain the necessary supermajority quorum for that purpose as required by Section 22.039, Local Government Code. Under Section 26.05(c), Tax Code, the tax rate defaulted to the previous year's rate of zero. The city has no current debt service.

The city now wishes to raise the ad valorem tax rate to a rate above zero. Since the current tax rate is zero, last year's levy also is zero, as is the effective maintenance and operations rate. With no current debt service, the rollback rate would be zero as well. If *any* increase in the tax rate would trigger voters' ability to petition for a rollback election, the city in theory could be prevented from collecting ad valorem taxes indefinitely. The question occurs whether, properly construed, the Tax Code's rollback provision compels this extraordinary result.

## QUESTIONS

Please provide an opinion regarding the following questions:

1. Does Section 26.07(a), Tax Code, allow voters to petition for a rollback election when a city increases the ad valorem tax rate from zero?
2. If so, at what rate of ad valorem tax is the voters' right to petition for a rollback election triggered?

I look forward to receiving your response to this request. Feel free to contact me if I can provide additional information.

May God bless you.

Very truly yours,



Judith Zaffirini

JZ/tjs

XC: Amy Akers, City Attorney, City of Santa Clara



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

Dear General Abbott:

This is to request an opinion pursuant to Section 402.042, Government Code, regarding whether the City of Santa Clara is subject to an ad valorem tax-freeze election under Article VIII, Section 1-b(h), Texas Constitution, when the current tax rate is zero.

**FACTS**

Article VIII, Section 1-b(h), Texas Constitution, authorizes the governing body of a city to “provide that if a person who is disabled or is sixty-five (65) years of age or older receives a residence homestead exemption..., the total amount of ad valorem taxes imposed on that homestead...may not be increased while it remains the residence homestead of that person.” This section further provides that on receipt of a petition signed by five percent of the registered voters of the city, the governing body “shall call an election to determine by majority vote whether to establish” the above-described limitation (or “freeze”) on rate increases.

In 2011 the city council of the City of Santa Clara voted to reduce the ad valorem tax rate from the then-current rate of 0.12 percent to zero for the 2012 tax year. When the council met again in 2012 to consider a new tax rate for 2013, it was unable to obtain the necessary supermajority quorum for that purpose as required by Section 22.039, Local Government Code. Under Section 26.05(c), Tax Code, the tax rate defaulted to previous year’s rate of zero.

Now some registered voters have petitioned the city to hold an election under Article VIII, Section 1-b(h), Texas Constitution, to determine whether to freeze the current ad valorem tax rate for persons who are disabled or are 65 years of age or older as described above. With the rate still at zero, the potential effect of subjecting the city to such an election would be to prevent the collection of taxes on an estimated 46 percent of residence homesteads in the city. The question occurs whether, properly construed, the constitutional rate-freeze provision compels this extraordinary result.

#### QUESTION

Please provide an opinion regarding the following question:

Does Article VIII, Section 1-b(h), Texas Constitution, require a city, in response to a petition by five percent of the registered voters of that city, to hold an election to determine whether to freeze the current ad valorem tax rate for residence-homesteads of persons who are disabled or are 65 years of age or older when the current ad valorem tax rate is zero?

I look forward to receiving your response to this request. Feel free to contact me if I can provide additional information.

May God bless you.

Very truly yours,



Judith Zaffirini

JZ/tjs

XC: Amy Akers, City Attorney, City of Santa Clara