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**RQ-0090-KP**

FILE # ML-47929-16

I.D. # 47929

January 7, 2016

Dear General Paxton,  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, TX 78711

Re: Request for an Attorney General Opinion

Question for Deliberation: Is it a violation of the Texas Constitution for tax payer funds levied as a result of a Rusk County School District Tax to be utilized to subsidize the tax burden of Gregg County residents?

The Texas Supreme Court struck down CED (County Education Districts) because *inter alia* such violated Article VIII Section 1-e of the Texas Constitution. The CEDs amounted to a state property tax, because the Districts performed no educational duties, rather only a taxing function *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.* 826 S.W.2d 489 (1992). Likewise, the Rusk County School Board performs no educational duties. Since there are school districts that cross county lines, resulting in the tax being used to subsidize another county's rates; there is no distinction to a Rusk County citizen between this system and the system Pronounced Unconstitutional by the Texas Supreme Court.

The issue was raised by a local taxpayer in the Kilgore Independent School District. The District serves students in both Rusk and Gregg Counties with school facilities in both Counties. The citizen advised the District's finance officer that the difference had resulted in over one and half million dollars in ten years and three cent effective rate difference. Purportedly the finance office pointed out to the citizen that were the rate lowered in Rusk County, then the rate would have to be raised in Gregg County; demonstrating what the citizen understandably considers the inequity of the law as applied to him.

#### Background

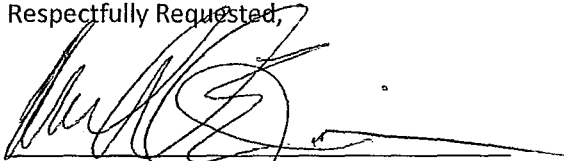
An election was held regarding the tax called the County Wide School Tax on July 23<sup>rd</sup> 1940. The Commissioners Court reviewed the vote on August 12, 1940 showing a vote count of 2725 votes for and 197 votes against.

Today, the Common School Board still distributes this tax to the school districts in Rusk County based off of student attendance from Rusk County students at each school. Some school districts overlap with other counties and serve students from both counties. There is no requirement that the

funds are in any way limited to the County from whom the funds were collected. The County Judge is the superintendent ex officio of the Common School Board. We have been advised by the ex-officio Superintendent that a representative from each precinct in the county is voted onto the board by election, but if the position is unopposed; then it does not appear on the ballot. Such tax could not be lawfully instituted today, nor is there any authority for the election of a County Superintendent.

Attached to this letter are the Commissioner Court minutes from August 12, 1940, Special Laws of The State of Texas passed by the Regular Session of the Forty-Sixth Legislature Chapter 35, a former Chapter 18 from the Education Code, and current Texas Education Code section 11.301.

Respectfully Requested,

A handwritten signature in black ink, appearing to read "Micheal E. Jimerson", written over a horizontal line.

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