

RECEIVED

OCT 25 2016

OPINION COMMITTEE

RQ-0137-KP



Texas Education Agency

Commissioner Mike Morath

1701 North Congress Avenue • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • tea.texas.gov

Via Email: opinion.committee@oag.texas.gov

October 26, 2016

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-48097-16
I.D. # 48097

RE: Whether the Commissioner of Education, in computing state funding for school districts receiving Additional State Aid for Tax Reduction (ASATR), must recognize and use Local Optional Homestead Exemptions (LOHE) that, under the analysis in A.G. Op. No. KP-0072 (2016), were not authorized to be adopted? Alternatively, in light of A.G. Op. No. KP-0072 (2016), must the commissioner disregard a local change to the homestead exemption for the purposes of determining ASATR even if the change has not been nullified through an administrative or judicial process?

Does the answer change if the school district modifications to the local option homestead occurred prior to or after the approval of the constitutional amendment by voters on November 3, 2015?

If a court determines that the law prohibiting the modification of the LOHE meets constitutional muster but the court only provides prospective relief, must the commissioner withhold the funds to the district or does the commissioner's duty to make the adjustment apply regardless of whether the underlying action was done illegally?

Dear General Paxton:

I seek your opinion to determine how to appropriately resolve the interplay of potential court determinations, an Attorney General Opinion regarding the legality of legislation, actions by school districts in contravention of that opinion, and duties imposed upon the office of the commissioner.

The Constitution requires an oath of all appointed officers "... to the best of my ability preserve, protect and defend ...laws...of the State..."¹ The Education Code requires the commissioner to "...take such action and require such reports consistent with this chapter as may be necessary to implement and administer the Foundation School Program."² The state policy indicates that the public school finance system "...shall adhere to a standard of neutrality...considering all state and local tax revenues of districts..."³

¹ Texas Constitution, Article XVI, Section 1

² Texas Education Code Section 42.004.

³ Texas Education Code Section 42.001(b)

During the 84th Regular Session, the Texas Legislature enacted Senate Joint Resolution (SJR) 1 and SB 1.⁴ SB 1 increased the resident homestead exemption for school district tax purposes⁵ and included requirements to hold the school district harmless for the loss in value due to the increase in the residential homestead exemption under Texas Tax Code 11.13(b).⁶ This legislation also contained a provision that prohibited school districts who adopted a LOHE in tax year 2014 from reducing or repealing the exemption.⁷ This prohibition expires on September 1, 2019.⁸ As indicated by the A.G. Op. No. KP-0072 (2016), this provision was effective on the date the constitutional amendment takes effect and SJR 1, was approved by voters on November 3, 2015.⁹

Questions arose whether this prohibition applied to school districts prior to the adoption of the constitutional amendment and some school districts opted to modify their local option homestead exemption. The Attorney General issued opinion KP-0072 on March 17, 2016, indicating that a court would likely find that the law was not unconstitutionally retroactive, and that districts were prohibited from repealing or reducing their LOHE that was adopted for the 2014 tax year through the 2019 tax year.¹⁰ In June 2016, the Commissioner of Education and the Attorney General issued a joint letter to school districts, which were known to have modified their LOHE advising them to come in compliance with the parameters of the statute. Recently some local tax payers have filed suits against some districts regarding this matter.¹¹

A school district's authority to provide a LOHE derives from the Texas Tax Code¹², not the Education Code. The commissioner has no explicit regulatory authority over Tax Code provisions. The Education Code further provides that "[a]ll powers and duties not specifically delegated by statute to the agency or to the State Board of Education are reserved for the trustees, and the agency may not substitute its judgment for the lawful exercise of those powers and duties by the trustee."¹³

Under the school finance system as laid out in Chapter 42, the flow of state funds to school districts is largely ambivalent to the existence or nonexistence of a LOHE as statute prohibits funding based on the LOHE unless funds are specifically appropriated or the commissioner determines the necessary excess funds exist in the Foundation School Program.¹⁴ No appropriations or determinations for this purpose have been made. However, with respect to districts funded through ASATR,¹⁵ statute requires the commissioner to adjust local revenue derived from maintenance and operations (M&O) tax collections for purposes of state funding to

⁴ Tex. S.J. Res. 1, 84th Leg., R.S. § 1, 2015 Tex. Gen. Laws 5412; Act of May 29, 2015, 84th Leg., R.S., ch. 465, § 1, 2015 Tex. Gen. Laws 1779.

⁵ Need to find citation.

⁶ Need to find citation.

⁷ Texas Tax Code Section 11.13(n-1).

⁸ Id.

⁹ A.G. Op. No. KP-0072 (2016) page 1-2.

¹⁰ A.G. Op. No. KP-0072 (2016)

¹¹ Kelly Martin v. White Deer ISD, et al.; Case No. 11807; in the 100th District Court of Carson County, Texas; Darlene Axberg, et al. v. Kilgore ISD, et al.; Cause No. 2016-1850-CCL2; in County Court at Law No. 2 of Gregg County, Texas

¹² Texas Tax Code Section 11.13(n)

¹³ Texas Education Code Section 11.151(b)

¹⁴ Texas Education Code 42.2522.

¹⁵ Texas Education Code 42.2516 will expire on September 1, 2017.

account for changes to the LOHE that occurred for the 2010 and subsequent tax years.¹⁶ The commissioner's decisions regarding ASATR are final and may not be appealed.¹⁷

Districts who made changes to their LOHE and who are subject to ASATR will be seeking the adjustment. Making the adjustment fulfills the plain language of one statute. However, it allows districts to benefit from acting in contravention to a law passed by the legislature and advised by the Attorney General to meet legal muster. Not making the adjustment will remove the benefit to the LOHE change for districts subject to ASATR, while districts not subject to ASATR who made similar changes will not see a similar modification to their state funding. Not making the adjustment will represent a savings of funds to the state, while flowing state funds via the adjustment will involve the payment of same amount of funds to the districts the state would have paid to the districts had the districts complied with the legislation.

The interplay of these issues has created several questions on how to appropriately exercise the duties of the Commissioner of Education.

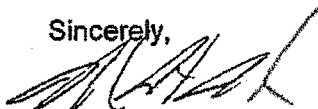
Must the Commissioner of Education, in computing state funding for school districts receiving ASATR, recognize and use LOHE that, under the analysis in A.G. Op. No. KP-0072 (2016), were not authorized to be adopted? Alternatively, in light of A.G. Op. No. KP-0072 (2016), must the commissioner disregard a local change to the homestead exemption for the purposes of determining ASATR even if the change has not been nullified through an administrative or judicial process?

Does the answer change if the school district modifications to the local option homestead occur prior to or after the approval of the constitutional amendment by voters on November 3, 2015?

If a court determines that the law prohibiting the modification of the LOHE meets constitutional muster but the court only provides prospective relief, must the commissioner withhold the funds to the district or does the commissioner's duty to make the adjustment apply regardless of whether the underlying action was done illegally?

Thank you for your attention to this matter. If you have any additional questions please feel free to contact Von Byer, TEA General Counsel, at (512) 463-9720.

Sincerely,



Mike Morath
Commissioner of Education
Texas Education Agency

¹⁶ Texas Education Code 42.2516(f-1)

¹⁷ Texas Education Code 42.2516(f-3) and (h)