



DALLAS COUNTY

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OPINION COMMITTEE

RQ-0285-GA

October 22, 2004

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

FILE # ML-43998-04
I.D. # 043998

Dear General Abbott:

On behalf of Dallas County Judge Margaret Keliher, in her capacity as Secretary of the Dallas County Appraisal District Board of Directors, we seek your opinion as to whether Section 6.025(d) of the Texas Property Tax Code is constitutional.

Section 6.025 provides as follows:

(a) The chief appraisers of two or more appraisal districts that have boundaries that include any part of the same territory shall enter into a written understanding that, with respect to the property located in the territory in which each of the districts has appraisal jurisdiction:

- (1) permits each appraiser to have access to and use information appropriate to appraisals, including a record of an exemption application, rendition, or other property owner report;
- (2) eliminates differences in the information in appraisal records of the districts, including information relating to ownership of property, the description of property, and the physical characteristics of property; and
- (3) contains the form of a written advisory prescribed by the comptroller informing the owners of property that reports and other documents required of the owners must be filed with or sent to each appraisal district and that the owners should consider sending any other document relating to the property to each appraisal district.

(b) The advisory described by Subsection (a)(3) may be sent to a property owner having property appraised by each district when the notice of appraised value required by Section 25.19(a) is sent.

(c) The chief appraisers of appraisal districts described by Subsection (a) shall to the extent practicable coordinate their appraisal activities so as to encourage and facilitate the appraisal of the same property appraised by each district at the same value.

(d) If on May 1 all the chief appraisers of the appraisal districts described by Subsection (a) in which a parcel or item of property is located are not in agreement as to the appraised or market value of the property, on that date each of the chief appraisers shall enter as the appraised or market value of the property on the appraisal records of the appropriate appraisal district the lowest appraised or market value of the property as determined by any of the chief appraisers. If as a result of a protest, appeal, or

other action the appraised or market value of the property is subsequently reduced in any of the appraisal districts, the chief appraiser shall notify each of the appraisal districts of the reduced appraised or market value. The chief appraiser of each appraisal district shall enter that reduced appraised or market value on the appraisal records as the appraised or market value of the property. If the appraised or market value is reduced in more than one appraisal district, each chief appraiser shall enter the lowest of those values on the appraisal records.

(Emphasis added).

Dallas County contends that Section 6.025(d), which automatically applies the lowest appraised value to certain properties in overlapping appraisal districts, violates a number of provisions in the Texas Constitution. Specifically, we believe the subsection violates Article 8, Sections 1(a) and (b), and Article 8, Section 18 of the Texas Constitution.

Article 8, Section 1(b) – Value

Article 8, Section 1(b) of the Texas Constitution requires all property to be “taxed in proportion to its value, which shall be ascertained as may be provided by law.” It has been established that “value,” for this purpose, is “market value.” *Nootsie, Ltd. V. Williamson County Appraisal District*, 925 S.W.2d 659, 661 (Tex. 1996); *Whelan v. State*, 282 S.W.2d 378, 380 (Tex. 1955). Further, Section 23.01 of the Property Tax Code provides, in pertinent part:

(a) Except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1.

(Emphasis added).

The Constitution does not permit the Legislature to provide for the taxation of property other than in proportion to its market value. Op. Atty. Gen. H-1022 (1977). Requiring one taxpayer to pay a tax based on market value while another pays based on a value that is below market value is both unfair and constitutionally prohibited. *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W. 3d 648, 654 (Tex. App. – Houston [14th Dist.] 2001, pet. denied).

As provided in Section 23.0101 of the Tax Code, market value can be determined by a consideration of the cost, income and market data comparison methods of appraisal. Similarly, Texas courts have recognized three general methods of determining market value: 1) the market data (or comparable sales) approach; 2) the cost approach; and 3) the income (or income capitalization) approach. *Travis Central Appraisal District v. FM Properties Operating Co.*, 947 S.W.2d 724, 730 (Tex. App. – Austin 1997, pet. denied). The courts will recognize alternative methods of valuation. However, rather than different definitions of market value, these approaches are simply different ways of arriving at an estimate of what a willing buyer would pay a willing seller. *Id.*

Notwithstanding the statutory and case law directives about establishing appraised value, Section 6.025(d) requires the selection of the lowest value determine in different markets, with different sets of comparables. Dallas County believes that automatic application of the lowest value to a property merely because it falls within overlapping districts does not establish value based on market value.

Article 8, Section 1(a) – Equal and Uniform Taxation

The Texas Constitution also requires that taxes be “equal and uniform.” Vernon’s Ann. Tex. Const. Art. VIII, Sec. 1(a). Taxes are “equal and uniform” when no person or class of persons in the territory taxed is taxed at a

higher rate than others in the same district upon the same values or thing and when the objects of taxes are the same by whomsoever owned or whatever they be. *Weatherly Independent School District v. Hughes*, 41 S.W.2d 445, 447 (Tex. Civ. App. – Amarillo 1931, no writ). The Legislature may create classifications of property: distinctions in the manner in which market value of property is determined for ad valorem tax purposes, as long as the classifications are not unreasonable, arbitrary or capricious. *Enron Corp. v. Spring Independent School District*, 922 S.W.2d 931, 936 (Tex. 1996); *Travis Central Appraisal District v. FM Properties Operating Co.*, 947 S.W.2d 724, 727 (Tex. App. – Austin 1997, pet. denied).

Dallas County believes that nothing in the wording of Section 6.025(d) or the legislative history of this section indicates that this section was intended to create a new classification. Indeed, if it were to be construed this way, the newly created class would include multiple types of properties in the overlapping districts – clearly and arbitrary classification. We believe Section 6.025(d) fails the constitutional test of “equal and uniform.”


Article 8, Section 18(c) – Single Board of Equalization

Article 8, Section 18(c) of the Texas Constitution also requires the Legislature, by general law, to provide for a single board of equalization for each appraisal entity, consisting of qualified persons residing within the territory appraised by that entity. Section 6.025(d) requires that an appraisal review board (board of equalization) for an individual overlapping appraisal district setting the lowest value establishes values for other overlapping districts where members of the appraisal review board do not reside. Thus, the constitutionally mandated residency requirement is not satisfied.

Dallas County respectfully seeks your opinion as to whether Section 6.025(d) of the Texas Property Tax Code violates Sections 1(a), 1(b) and 18(c) of Article 8 of the Texas Constitution.

Thank you for your kind assistance in this matter. We look forward to your reply.

Sincerely,



Moira Parro
Assistant District Attorney
Dallas County, Texas