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OPINION COMMITTEE

FILE # ML 45034-06
I.D. # 45034

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

RQ-0544-GA

Attention: Opinion Committee

RE: Request for Attorney General Opinion regarding
Purposed Tax Freeze by the Calhoun County Navigation District

To Whom It May Concern:

As the Criminal District Attorney for Calhoun County, Texas, I have been requested to seek an opinion from you regarding the above referenced matter. I have attached a brief which details all of the relevant information.

For additional questions or comments, please feel free to contact me at the above listed address and telephone number.

Very truly yours,

DAN W. HEARD,
Criminal District Attorney
For Calhoun County, Texas

Enclosure

DWH:jam

**BRIEF FOR REQUEST FOR AN OPINION ON WHETHER OR NOT
THE CALHOUN COUNTY NAVIGATION DISTRICT HAS THE
AUTHORITY TO AUTHORIZE A TAX FREEZE PURSUANT
TO ARTICLE VIII, SECTION 1-b(h) OF THE TEXAS CONSTITUTION**

STATEMENT OF FACTS

In September of 2006, the Calhoun County Navigation District requested a Resolution for Board approval which would allow the Calhoun County Navigation District to impose a tax freeze on certain properties taxed by the District in accordance with Article VIII, Section 1-b(h). Article VIII, Section 1-b(h), (the "amendment") of the Texas Constitution, adopted in 2003, authorizes a "a county, a city or town, or a junior college district," to limit the increase of the total amount of ad valorem taxes imposed on the homesteads of persons with disabilities or persons sixty-five years of age or older. Upon the District's General Counsel's interpretation that Article VIII of the Texas Constitution may prohibit such a tax freeze resolution, the Calhoun County Navigation District contacted this office to request an Attorney General's Opinion to determine whether or not a tax freeze is authorized under the amendment of Article VIII, Section 1-b(h) of the Texas Constitution by a Navigation District created pursuant to Article 16, Section 59 of the Texas Constitution. The Calhoun County Navigation District is Political Subdivision, a Governmental Agency and Body Politic operating and existing as a Conservation and Reclamation District pursuant to Article 16, Section 59 of the Constitution of the State of Texas.

ISSUE NUMBER ONE

MAY THE CALHOUN COUNTY NAVIGATION DISTRICT, A POLITICAL SUBDIVISION, PASS A TAX FREEZE RESOLUTION PURSUANT TO ARTICLE VIII, SECTION 1-b(h) OF THE TEXAS CONSTITUTION TO LIMIT THE TAXES IMPOSED ON THE HOMESTEAD OF PERSONS WITH DISABILITIES OR PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER.

Analysis and Conclusion:

Article VIII, Section 1-b(h) of the Texas Constitution, was amended in 2003, as follows:

The governing body of “a county, a city or town, or a junior college district” by official action may provide that if a person who is disabled or is sixty-five (65) years of age or older receives a resident homestead exemption authorized by this section, the total amount of ad valorem taxes imposed by the county, the city or town, or the junior college district may not be increased while it remains the resident’s homestead of that person or that person’s spouse who is disabled or sixty-five years of age or older and receives a residential exemption on the homestead...(Vernon 2003).

The Calhoun County Navigation District is not “a county, a city or town, or a junior college district” as provided for in Section 1-b(h), but is rather a Political Subdivision, a Governmental Agency and Body Politic operating and existing as a Conservation and Reclamation District pursuant to Article 16, Section 59 of the Constitution of the State of Texas.

In researching the answer to this question, three opinions of the Attorney General’s office have recently interpreted the amended Texas Constitutional Amendment under Article VIII, Section 1-b(h), those being Opinion No. GA-0363, Opinion No. GA-0269 and Opinion No. GA-0222. Pursuant to these Attorney General opinions, to construe such a subsection, strict adherence to the rules of constitutional construction as

articulated by the Courts must be followed. Further, these opinions note that Courts have held that the constitutional provisions must be given the effect that the legislators and voters intended. See *Doody v. Ameriquest Mortgage*, 49 S.W.3d 342, 344 (Tex. 2001). Additionally, in the above stated Attorney General Opinions, the Attorney General Office has relied heavily on the subsection's literal text and gives affect to its plain language. See *Stringer v. Cendant Mortgage Corp.*, 23 S.W.3d 353, 355 (Tex. 2000). Furthermore, in construing the text, the Attorney General's office has held that it must presume "that the language of the Texas Constitution is carefully selected, and must construe its words as they are generally understood." *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000).

There are no Attorney General Opinions dealing specifically with whether or not a political subdivision other than those entities enumerated in the Constitutional Amendment, may impose a tax freeze. In construing a Statute the clear language of the statute will govern. It is important to note that Article 1-b of the Texas Constitution does extend power to a "Political Subdivision" to exempt or reduce taxes in certain other situations. For example, Article VIII, Section 1-b(b), provides that:

The governing body of any county, city, town, school district, or *other political subdivision* of the State may exempt by its own action not less than Three Thousand Dollars (\$3,000) of the market value of residence homesteads of persons, married or unmarried, including those living alone, who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor or of married or unmarried persons sixty-five (65) years of age or older. (emp. added)

Also in Article VIII, Section 1-b(e), provides that:

The governing body of a *political subdivision*, other than a county education district, may exempt from ad valorem taxation a percentage of

the market value of the residence homestead of a married or unmarried adult, including one living alone. (emp. added)

However, Article VIII, Section 1-b(h) very specifically delineates county, city, town, or junior college district. It does not, as it does in its other subsections, include the term political subdivision.

Based upon the Rules of Statutory Construction and also the apparent intent of the legislators, it would appear that the Constitution was amended to grant power to "political subdivisions" in Sections 1-b(b) and 1-b(e) but chose to limit a political subdivision's authority in Section 1-b(h). As stated previously, the Calhoun County Navigation District is a Political Subdivision and while it would have authority under certain Sections of Article VIII, it apparently does not have the authority to grant a tax freeze and limit the increase of total amount of ad valorem taxes imposed on homesteads of persons with disabilities or persons sixty-five years of age or older. Accordingly, it appears that the Calhoun County Navigation District does not have the authority to pass a resolution to impose the tax freeze under Article VIII, Section 1-b(h) of the Texas Constitution. We now seek a formal opinion from the Attorney General in an effort to resolve this matter of statutory construction.