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September 23, 2013

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

FILE # ML-47401-13

I.D. # 47401

Attention: Jason Boatright, Chairman, Opinion Committee

Re: Request for an Attorney General Opinion to determine whether the citizens of Harris County may petition, under repealed Texas Education Code Chapter 18, to increase the county equalization tax; and if so, whether the petition may require the equalization tax funds be used only for a specific purpose and additionally, whether the equalization tax funds must be distributed according to Section 18.14, and whether the funds must be used only in Harris County.

COMMITTEES:

Chair
Education

Finance

Criminal Justice

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Transportation

Dear General Abbott:

A group of citizens in Harris County has attempted, under repealed Texas Education Code Chapter 18, to petition the Harris County Judge to order an election to determine whether to levy and collect an equalization tax for the Harris County Department of Education (HCDE), raising the county property tax rate.

The Texas Education Code Chapters 17 and 18 were repealed by the Texas Legislature; however, under Sec. 11.301 of the Texas Education Code, "A school district or county system operating under former Chapter 17, 18 ... on May 1, 1995, may continue to operate under the applicable chapter as that chapter existed on that date and under state law generally applicable to school districts that does not conflict with that chapter." Therefore, these chapters appear to remain in effect for the HCDE. Nevertheless, the question remains whether the HCDE would be continuing to operate under the chapters "as that chapter existed on that date" if the proposed property tax rate increase was adopted.

Repealed Texas Education Code Section 18.07 states:

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Fax: (512) 463-8810

DISTRICT OFFICE
11451 Katy Freeway
Suite 209
Houston, Texas 77079
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§ 18.07 Petition for Tax Election

- (a) On receipt of a petition legally praying for the authority to levy and collect an equalization tax and fulfilling the requirements of this section, the county judge of any county which has adopted the county-unit system shall immediately order an election to be held throughout the county in compliance with the terms of the petition. ...*
- (c) The petition may pray for authority to levy and collect an equalization tax at any specified rate not in excess of the maximum for the county as set out in Section 18.12 of this code.*

Accordingly, I submit to your office the following questions in request of an Attorney General Opinion:

1. Do the citizens of Harris County continue to have a right under Section 11.301(a) of the Texas Education Code to petition for an election to increase the county equalization tax in light of the repeal of Section 18.07 of the Texas Education Code? and if so,
2. May the petition require the increase to be used only for a specific purpose?
3. If the answer to question one, above, is affirmative, and the election is granted and is successful, must the Harris County School Trustees distribute the Equalization Tax funds to the Independent School District according to Texas Education Code Section 18.14, or may they use the funds in any manner they see fit?

Repealed Texas Education Code Section 18.14 states:

§ 18.14 Distribution of Equalization Tax Funds

- (a) The county governing board shall distribute the moneys collected from the equalization tax according to the provisions of this section.*
- (b) The funds shall be distributed to the common and independent school districts of the county on the basis of the average daily attendance for the prior year as approved by the State Department of Education.*
- (c) Any county-line district shall be eligible to receive its per capita apportionment based upon the number of scholastic pupils residing in the county of the equalization district as shown by the average daily attendance for the prior year as approved by the State Department of Education.*
- (d) The county governing board shall issue warrants (on the per capita basis specified above) against the equalization fund to the school district trustees in each district. However, the apportionment may be made by the county governing board either annually or from time to time as the money is collected.*

(e) The county superintendent in each county adopting the county unit system and authorizing the assessment and collection of an equalization tax shall keep a record of all money, both received and paid out, from the county equalization fund.

4. Finally, if the answer to question one, above, is affirmative, and the election is granted and is successful, are the Harris County School Trustees limited to providing services to Harris County public schools, or may they provide goods and services elsewhere in Texas?

Thank you for your assistance on this matter and please feel free to contact my office for further information.

Respectfully,

A handwritten signature in cursive script that reads "Jan Patrick". The signature is written in dark ink and is positioned below the word "Respectfully,".