



RECEIVED

JUL 21 2014

OPINION COMMITTEE

TEXAS EDUCATION AGENCY

1701 North Congress Ave. • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • www.tea.state.tx.us

Michael Williams  
Commissioner

July 9, 2014

The Honorable Greg Abbott  
ATTN: Opinion Committee  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711

FILE # ML-47606-14

I.D. # 47606

RQ-1211-GA

Re: Whether an independent school district may use the certified estimate of property tax values, provided by the central appraisal district of the county in which it is located, to adopt a tax rate after adopting its budget in order to schedule a tax ratification election for the November uniform election date

Dear General Abbott:

The purpose of this letter is to seek your opinion regarding whether an independent school district ("ISD" or "district") may use the certified estimate of property tax values, provided by the central appraisal district of the county in which it is located, to adopt a tax rate after adopting its budget in order to schedule a tax ratification election for the November uniform election date. The question I pose revolves around the interaction of the various deadlines in the Texas Education Code, the Texas Tax Code, and the Texas Election Code provisions governing the adoption of a school district's budget and tax rate and the scheduling of tax ratification elections ("TRE"s).

Each year, the board of trustees of an ISD must adopt a budget and a tax rate for the next fiscal year. The process for doing so is governed by Subchapter A, Chapter 44 of the Texas Education Code, as well as Subtitle D, Chapter 26 of the Texas Tax Code. Under Section 44.004(g) of the Texas Education Code, generally the budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year begins. If the ISD sets its tax rate at a rate that exceeds its rollback rate, it must then hold a TRE.<sup>1</sup> TEX. TAX CODE § 26.08(a).

Districts are generally required to use the certified appraisal roll in adopting both the budget and the tax rate and in calculating the rollback rate. See TEX. EDUC. CODE § 44.004(c); TEX. TAX CODE § 26.05(a). More precisely, before adopting its budget or tax rate, a school district must publish a specific and detailed notice in a district newspaper ten to thirty days before the meeting at which it considers the proposed budget and tax rate. *Id.* The notice must include a section on the total appraised and taxable value within the district, as well as sections

<sup>1</sup> The method for calculating a district's rollback tax rate is set forth in Texas Education Code Section 44.004(c)(5)(A)(ii)(b).

comparing the proposed rate and levy with the prior year's rate and levy. *Id.* at § 44.004(c)(3), (5)-(6). The notice also has to include the district's calculated rollback tax rate. *Id.* at § 44.004(c)(8). These requirements typically mean that the district must have the certified appraisal roll before publishing notice of the meeting(s) in which it adopts the budget and the tax rate. See TEX. EDUC. CODE § 44.004(c).

Under Section 26.01(a) of the Texas Tax Code, the chief appraiser is to provide the certified tax appraisal roll to districts by July 25. However, about one hundred sixty-one (161) of the state's school districts — generally the larger districts — start their fiscal year on July 1. Therefore, a district may instead use the certified *estimate* of the taxable value of district property, which is to be provided to school districts by April 30 of each year, in adopting its budget, but is generally expected to wait to adopt its tax rate until it receives the certified appraisal roll. See TEX. EDUC. CODE § 44.004(h)-(i); TEX. TAX CODE § 26.01(e).

Another exception is laid out in Section 26.05(g) of the Tax Code, which allows a school district to use the certified estimate in adopting its tax rate, as well as in adopting its budget. If it does so, it must also use the certified estimate to calculate its rollback rate. TEX. TAX CODE § 26.05(g). Also, if a district takes advantage of Section 26.05(g) of the Tax Code and uses the certified estimate to adopt its tax rate, it “*may adopt a budget after [it] adopts a tax rate.*” TEX. EDUC. CODE § 44.004(j).

No matter which of these provisions a district follows in adopting its tax rate, if that rate exceeds the calculated rollback rate, it must hold a TRE to allow the voters of the district to determine whether to approve the tax rate. TEX. TAX CODE § 26.08(b). The TRE must be held not more than 30 nor less than 90 days after the district adopts its tax rate. TEX. TAX CODE § 26.08(b). If one of the uniform general election dates falls within the 30-to-90 day window, the TRE must be held on that date. *Id.*

The requirement that the TRE be held on an available uniform general election date fits within and advances a larger statutory scheme adopted by the legislature that favors uniform election dates over special elections. TEX. ELEC. CODE § 41.001. The public policy reasons behind this legislative preference include cost-savings from administering fewer elections, as well as increased voter participation. See House Research Organization, Bill Analysis, TEX. H.B. 57, 79th Leg. R.S. (2007) at 3; Senate Research Center, Bill Analysis, TEX. H.B. 57, 79th Leg. R.S. (2007) at 1.<sup>2</sup>

Section 3.005(c)(1) of the Texas Election Code requires an election held on the date of the general election for state and county officers (the first Tuesday after the first Monday in November in even-numbered years) to be called at least 78 days before the election date. See *a/so* TEX. ELEC. CODE 41.002. The combination of this provision and Section 26.08 of the Texas Tax Code means that in order for a school district to hold a TRE on November 4, 2014, it must adopt its tax rate and order an election no earlier than August 7 and no later than August 18.

If a school district receives its certified appraisal roll by the July 25 deadline, these interacting requirements and deadlines do not pose a problem. A district which begins its fiscal year on July 1 can adopt its budget using its certified estimate (under Texas Education Code § 44.004(h)), then wait and adopt its tax rate after receiving the certified appraisal roll sometime

---

<sup>2</sup> Available at <http://www.hro.house.state.tx.us/pdf/ba79r/hb0057.pdf#navpanes=0> and <http://www.capitol.state.tx.us/tlodocs/79R/analysis/pdf/HB00057S.pdf#navpanes=0>, respectively.

during the August 7 to August 18 time frame and order the election for November 4, 2014 (under Texas Education Code § 44.004(i)).

Unfortunately, Harris County and other large urban counties often cannot and do not meet the July 25 deadline. For example, this year the Harris County Appraisal District does not expect to provide the certified appraisal roll to school districts until the last week in August. This late date means that a school district in Harris County that wishes to adopt a tax rate that exceeds the rollback rate and order a TRE for the November general election *must* use the certified estimate to adopt its tax rate. If it waits and adopts its tax rate after receiving the certified appraisal roll, it will not meet the 78-days-before-the-election deadline imposed by Section 41.002 of the Election Code; yet it would not be able to hold the election on a different date because the uniform election date would fall within the 30-to-90 day window for calling the election imposed by Section 26.08(b) of the Tax Code.<sup>3</sup>

On the other hand, if a school district uses the certified estimate to adopt its tax rate in June *before* adopting its budget, as authorized by Section 44.004(j) of the Education Code, it would be forced to hold a separate election prior to the uniform general election date, because November 4, 2014 would fall after the 30-to-90 day window for holding the TRE had expired. Holding a separate election would incur significantly more cost, result in lower voter participation, and thwart the legislature's intention in reducing the number of uniform election dates back in 2005.

This brings me back to my question: may a district use the certified estimate of property tax values, provided by the central appraisal district of the county in which it is located, to adopt a tax rate *after* adopting its budget in order to schedule a tax ratification election for the November uniform election date?<sup>4</sup> It is my belief that it can. Section 44.004(j) states:

Notwithstanding Subsection (g), (h), and (i), a school district *may* adopt a budget after the district adopts a tax rate for the tax year in which the fiscal year covered by the budget begins if the district elects to adopt a tax rate before receiving the certified appraisal roll for the district as provided by Section 26.05(g). If a school district *elects* to adopt a tax rate before adopting a budget . . . .

(emphasis added). While subsection (j) is the only subsection within Section 44.004 that contemplates districts using the certified estimate to adopt its tax rate, it does not appear to *require* that districts adopt the tax rate before the budget in order to do so. The statute uses the word "may," which, under the Code Construction Act, "creates a discretionary authority or grants permission or power." See TEX. GOV'T CODE § 311.016. It does not use "shall," which imposes a duty. *Id.* Therefore, if the Legislature had wanted to require districts using the certified estimate to adopt the tax rate before the budget, it would have rephrased subsection (j) to say, "If a district elects to adopt a tax rate before receiving the certified appraisal roll for the district as provided by Section 26.05(g), the district *shall* adopt a budget after it adopts a tax rate . . . ."

---

<sup>3</sup> In fact, under this scenario, the only way a school district could hold an election on a date other than the November 4 uniform date, using the certified appraisal roll to adopt its tax rate, would be wait to adopt its tax rate on a date falling outside of the 30-to-90-day window, the earliest date being October 6, 2014. This would result in an election in December of 2014, just thirty days following the general election date.

<sup>4</sup> Under the scenario proposed, a school district would adopt a budget (using certified estimates of property values) prior to its July 1 fiscal year deadline, and then sometime between August 7 and August 18 (prior to its receipt of its certified values from the county) adopt its tax rate and order a TRE (using certified estimates).

Reading Section 44.004(j) as permissive also comports with the Code Construction Act's directives to consider the consequences of a particular construction and to favor the public interest over any private interest. See TEX. GOV'T CODE §§ 311.021, 311.023. In this case, allowing a district to use the certified estimate to adopt a property tax rate after adopting its budget will advance the dual interests of significantly increasing voter participation in the TRE, which could be held on a uniform election date, and significantly decreasing the cost of administering the TRE.

I appreciate your prompt consideration of this opinion request. This request does not deal with any issue that is currently subject to litigation and neither the Texas Education Agency nor, to the best of my knowledge, any school district is currently a party to litigation regarding this issue. Your opinion regarding this issue will enable school district to ensure that they are in full compliance with all state laws governing the adoption of budgets and tax rates and the scheduling of TREs.

However, because the answer to the question posed in this request potentially impacts many school districts currently faced with having to call TREs and trying to comply with fast-approaching deadlines, we ask for expedited consideration of this request.

If I may provide any additional information to assist you with your consideration of this opinion request, please contact me at any time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Williamis", written over a horizontal line.

Michael Williamis  
Commissioner of Education

bcc: David Thompson, Thompson & Horton LLP  
Lisa R. McBride, Thompson & Horton LLP

CW/da/ds