

RECEIVED

AUG 16 2018

OPINION COMMITTEE



FILE # ML-48404-18
I.D. # 48404

CHARLES SCHWERTNER

STATE SENATOR • DISTRICT 5

COMMITTEES: HEALTH & HUMAN SERVICES, CHAIR • BUSINESS & COMMERCE • FINANCE • STATE AFFAIRS

RD-0242-KP

August 16, 2018

The Honorable Ken Paxton
Attorney General of Texas
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Expedited Opinion Regarding (1) a Home-Rule Municipality's Authority to Adopt a Local Residential Homestead Property Tax Exemption; and (2) an Appraisal District or Chief Appraiser's Authority to Disregard or Modify a Local Residential Homestead Property Tax Exemption Adopted by a Local Taxing Unit

Dear Attorney General Paxton,

With this letter, I respectfully request your expedited opinion regarding the following questions:

(1) whether a home-rule municipality in Texas can legally adopt a residential homestead property tax exemption that provides for a minimum exemption amount greater than \$5,000; and (2) whether an appraisal district or chief appraiser is legally authorized to disregard or modify a local residential homestead property tax exemption adopted by a local taxing unit.

These questions are matters of significant and immediate public interest, and the expedited nature of the request is due to the City of Cedar Park ("the City") having its homestead exemption ordinance set to be implemented with two different minimum amounts (\$5,000 and \$10,000) in two different counties for the upcoming fiscal year. By statute, the City must adopt its proposed budget and property tax rate no later than September 30, 2018.

Summary

On April 26, 2018, the City – a home-rule municipality situated in both Williamson and Travis Counties – adopted an ordinance providing its first-ever local residential homestead property tax exemption. This ordinance was adopted per Texas Tax Code Sec. 11.13(n) and provides for an exemption equal to 1% of the appraised value of the residential homestead property, but not less than \$10,000. According to Texas Tax Code Sec. 11.13(n), local residential homestead exemptions must be adopted by July 1st of each year to be effective for the upcoming tax year.

BRYAN OFFICE:

3000 BRIARCREST DRIVE, SUITE 202
BRYAN, TEXAS 77802
(979) 776-0222 • FAX: (979) 776-0220

CAPITOL OFFICE:

E1.806 • P.O. Box 12068 • AUSTIN, TEXAS 78711
(512) 463-0105 • FAX: (512) 463-5713
charles.schwertner@senate.texas.gov

GEORGETOWN OFFICE:

501 S. AUSTIN AVE., SUITE 1250
GEORGETOWN, TEXAS 78626
(512) 863-8456 • FAX: (512) 863-8436

On May 11, 2018, the City forwarded notice of this new ordinance to both the Williamson County and Travis County Central Appraisal Districts ("WCAD" and "TCAD," respectively). The current WCAD certified tax roll for the upcoming 2019 tax year reflects the adopted 1%/\$10,000 exemption. TCAD, however, refused to implement the City's homestead exemption as adopted and instead forwarded a certified tax roll reflecting a \$5,000 minimum amount, claiming state law does not authorize the City to adopt a \$10,000 minimum. In doing so, TCAD unilaterally modified the City's duly-adopted homestead exemption (from a \$10,000 minimum to a \$5,000 minimum).

Discussion

The Texas Constitution, Art. VIII, Sec. 1-b(e) authorizes certain political subdivisions, including municipalities, to adopt a residential homestead property tax exemption:

(e) 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. In the manner provided by law, the voters of a county education district at an election held for that purpose 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. **The percentage may not exceed twenty percent. However, the amount of an exemption authorized pursuant to this subsection may not be less than \$5,000 unless the legislature by general law prescribes other monetary restrictions on the amount of the exemption. The legislature by general law may prohibit the governing body of a political subdivision that adopts an exemption under this subsection from reducing the amount of or repealing the exemption.** An eligible adult is entitled to receive other applicable exemptions provided by law. Where ad valorem tax has previously been pledged for the payment of debt, the governing body of a political subdivision may continue to levy and collect the tax against the value of the homesteads exempted under this subsection until the debt is discharged if the cessation of the levy would impair the obligation of the contract by which the debt was created. The legislature by general law may prescribe procedures for the administration of residence homestead exemptions. (emphasis added).

Texas Tax Code Sec. 11.13(n) further provides:

(n) In addition to any other exemptions provided by this section, an individual is entitled to an exemption from taxation by a taxing unit of a percentage of the appraised value of his residence homestead if the exemption is adopted by the governing body of the taxing unit before July 1 in the manner provided by law for official action by the body. **If the percentage set by the taxing unit produces an exemption in a tax year of less than \$5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of \$5,000 of the appraised value. The percentage adopted by the taxing unit may not exceed 20 percent.** (emphasis added).

Both Texas Constitution, Art. VIII, Sec. 1-b(e) and Texas Tax Code Sec. 11.13(n) expressly authorize a percentage exemption up to 20% and prescribe a minimum exemption amount of \$5,000. Both provisions clearly prohibit a minimum exemption amount lower than \$5,000, but neither provision specifically authorizes or prohibits a minimum exemption amount higher than \$5,000.

Home-rule municipalities possess the full power of self-government consistent with state and federal law. Tex. Loc. Gov't. Code, Sec. 51.072. Home-rule municipalities derive their power from the Texas Constitution and look to the legislature not for grants of power but only for limitations on their authority. See Tex. Const., Art. XI, Sec. 5; *Dallas Merchant's and Concessionaire's Assn. v. City of Dallas*, 852 S.W.2d 790, 792 (Tex. 1982). Further, municipal ordinances are presumed valid unless void or declared invalid by a court. See Tex. Loc. Gov't. Code, Sec. 51.003.

The referenced provisions of the Texas Constitution and Tax Code expressly authorize a home-rule municipality to adopt a percentage residential homestead property tax exemption up to 20%, with a minimum amount of \$5,000—and nothing expressly prohibits a higher minimum exemption amount. Increasing the minimum exemption amount (subject to the 20% percent maximum), would not conflict with the stated \$5,000 minimum.

Appraisal districts are political subdivisions of the state generally authorized pursuant to Chapter 6 of the Texas Tax Code. “An appraisal district may exercise only powers that are expressly delegated to it by the constitution or statutes and those necessarily implied from such express powers.” Tex. Att’y Gen. Op. No. KP-0081 (2016) at 3 (citing Tex. Att’y Gen. Op. No. GA-0681 (2008) at 2).

No provision exists in state law authorizing an appraisal district or chief appraiser to unilaterally modify a duly-adopted homestead exemption. Instead, at Section 11.13(n), the Tax Code expressly authorizes a “local taxing unit” to adopt a homestead exemption.

A taxing unit is an entity “that is authorized to impose and is imposing ad valorem taxes on property.” TEX. TAX CODE § 1.04(12). An appraisal district itself does not have authority to impose taxes and is therefore not a taxing unit. Tex. Att’y Gen. Op. No. JM-919 (1988) at 2.

Tex. Att’y Gen. Op. No. KP-0175 (2017) at n.4.

A chief appraiser lawfully exercises discretion in the consideration of applications for exemptions (see Tex. Tax Code, Sec. 11.45), but not with respect to the adoption, modification, or implementation of an adopted exemption. Nothing in state law grants an appraisal district or chief appraiser discretion as to whether (or to what extent) a particular adopted exemption should be implemented; to substitute their judgment for that of the elected governing body of the local taxing unit in adopting or modifying an exemption; or to determine the validity of an adopted exemption. An appraisal district and chief appraiser’s duty to implement exemptions as adopted by a local taxing unit is legally without discretion or judgment and therefore ministerial.

An appraisal district “may not impose additional burdens, conditions, or restrictions in excess of or inconsistent with the statutory provisions.” *Riess v. Appraisal Dist. of Williamson Cty.*, 735 S.W.2d 633, 638 (Tex. App.-Austin 1987, writ denied). Because (a) a municipal ordinance is presumed valid, (b) an appraisal district and chief appraiser’s duty to implement an adopted homestead exemption is ministerial in nature, and (c) any additional burden condition or restriction would violate state law, an appraisal district and chief appraiser must implement and apply a homestead exemption as adopted by the local taxing unit.

With this in mind, please provide your opinion on the following questions:

- (1) Under Texas law, can a home-rule municipality adopt a residential homestead property tax exemption providing for a minimum amount greater than \$5,000?

(2) Under Texas law, is an appraisal district or chief appraiser authorized to disregard or modify a residential homestead property tax exemption adopted by the local taxing unit?

Recognizing that neither statute nor rule requires expedited service from the Attorney General in rendering this opinion, I respectfully advise of the upcoming September 30, 2018 statutory deadline for adopting local annual budgets and property tax rates, as well as the pending implementation of any local residential homestead property tax exemptions adopted for the immediately upcoming tax year.

Thank you for your consideration. Should your office require further information, please do not hesitate to contact me.

Respectfully,



Charles Schwertner
State Senator
Chair, Senate Committee on Health and Human Services

Cc: Senator Kirk Watson
Representative Paul Workman
Representative Tony Dale
Travis County Judge Sarah Eckhardt
Travis County Commissioner Gerald Daugherty
Williamson County Judge Dan Gattis
Williamson County Commissioner Cynthia Long
Cedar Park Mayor Corbin Van Arsdale