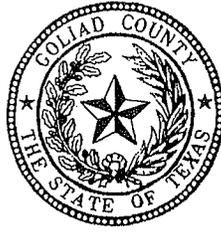
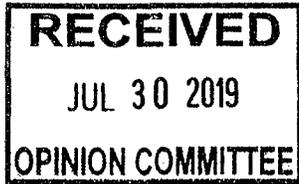


ROB BAIAMONTE
County Attorney
Goliad County, Texas



P. O. Box 24, Goliad, Texas 77963
(361) 645-2184
Fax (361) 645-1711
Email: rbaiamonte@goliad.net

July 24, 2019

The Honorable Ken Paxton
Attorney General
State of Texas
P.O. Box 12548
Austin, TX 78711-2548

CERTIFIED MAIL #70103090000350660282

RQ-0298-KP
FILE # ML-48589-19
I.D. # 48589

Re: *If some citizens of a county want to repeal a special road tax, voted in the early 1900's, pursuant to Transportation Code §256.052, are they required to follow the requirements in Transportation Code §256.053?*

If so, would 50% plus one of the registered voters that sign the petition requesting the commissioners court to call for an election to repeal the special road tax, be satisfactory proof to the commissioners court to call for an election to repeal the tax?

Dear Mr. Paxton:

The facts of our situation are as follows:

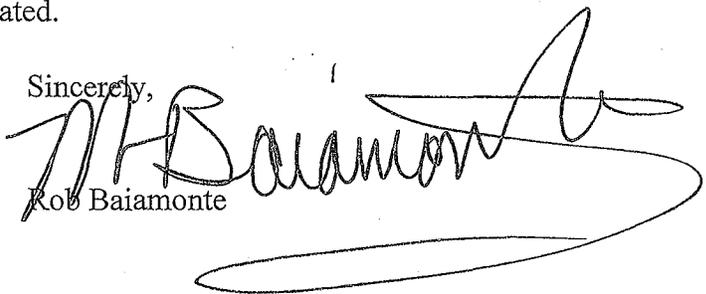
Back in the early 1900's, pursuant to statutory authority then in place, an election was called for by the commissioners court to adopt a special road tax up to 15¢ per \$100.00 value. Said election was approved and the tax was levied.

Fast forward to 2019, a concerned citizen has decided the county should have an opportunity to repeal the tax and gathered 232 signatures on a petition, believing Transportation Code §256.052 applies. Unfortunately, the County Judge and one Commissioner believe TC §256.052 (requiring 200 signatures) applies also. This office has conveyed to them that TC §256.053 applies and the commissioners would need to be satisfied the majority of the qualified voters would vote to repeal the tax.

The County Judge has asked me to write you asking for an Attorney General Opinion; therefore I am being the good soldier and requesting your opinion.

Your responses to these inquiries are greatly appreciated.

Sincerely,


Rob Baiamonte

Brief on §256.053 of the Texas Transportation Code

This seems to be a request of first impression.

The proponents of Transportation Code (herein TC) §256.052, when applying the number of signatures required on the petition, to have the measure voted upon use TC §256.053(a) as their basis. TC §256.053(a) states "...the court...may order an election to repeal a tax adopted under TC §256.052 **in the manner provided for an election to adopt the tax (emphasis added)**. It is my belief that specific language applies to ordering the election TC §256.052(d); county judge shall issue an election proclamation TC §256.052(e); the language on the ballot TC §256.052(f); majority vote in favor of tax the court SHALL impose tax TC §256.052(g) and does not authorize issuance of bonds TC §256.052(h). The concerned citizen, together with the County Judge and commissioner, believe "in the manner provided for an election to adopt the tax" also applies to how many signatures are required to repeal the tax. If that was the case, then TC §256.053 (c) would have no meaning. I believe the legislature put TC §256.053 (c) in the statute to raise the bar to order an election to repeal the tax.

Pursuant to TX Gov't Code §311.011 "words and phrases shall be read in context and construed according to the rules of grammar and common usage. Therefore TC §256.053 (c) applies to repeal when determining the number of signatures needed for the commissioners court to determine whether to call for an election repealing the special road tax. Otherwise, it has no effect.

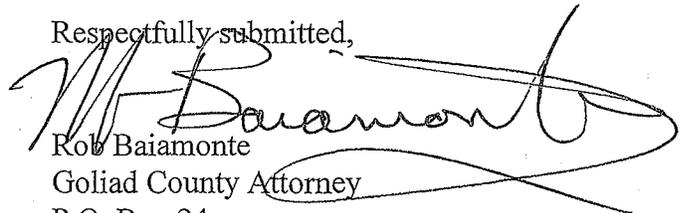
Brief on What is a Majority of Voters that Would Vote to Repeal the Tax

There are over 5,100 registered voters in Goliad County. The legislature set a high bar in TC §256.053(c) "...only (emphasis added) if satisfactory proof is presented to the court that (1) there is great dissatisfaction with the tax; and (emphasis added)...a majority of the residents...are qualified to vote...would vote for repeal of the tax". I believe a district court would likely find that ordering an election to repeal the special road tax with only 232 signatures on the petition does NOT demonstrate "great dissatisfaction with the tax." The question then becomes how can a person show the commissioners court there is great dissatisfaction with the tax.

One possibility is to have over 2,550 registered voters sign a petition that basically states if give then opportunity, I would vote to repeal the special road tax. How else would the commissioners court be "satisfied" there was "great dissatisfaction with tax". I am sure there are many ways of meeting this burden, but 2,550 signatures is some pretty strong medicine.

Also again apply TX Govt Code §311.011 the above stated approach would construe TC §256.053(c) according to "common usage", therefore the statute would have some meaning.

Respectfully submitted,



Rob Baiamonte
Goliad County Attorney
P.O. Box 24
Goliad, TX 77963
(361) 645-2184
State Bar No. 01513300