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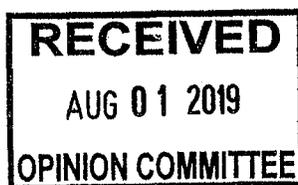
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MATTHEW A. MILLS, COUNTY ATTORNEY

August 1, 2019

Via Electronic Mail Delivery

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



RQ-0299-KP

FILE # ML-48594-19

I.D. # 48594

Re: Whether a 1988 resolution approved by over three-fourths of the taxing entities entitled to vote for appraisal district directors was invalidated by 2007 legislation (HB 1010) which allowed for only one statutory method for determining voting entitlements; whether the fact that the 1988 resolution has not been renewed or amended since the 2007 legislation makes it no longer valid; whether the rescission of the 1988 resolution by Granbury ISD (bringing its approval to less than three-fourths) and the fact that the one-entity/one-vote scheme (if allowed) would reduce Granbury ISD's voting entitlement to less than 50 percent of what it would be under section 6.03 (the formulaic default method) triggers the invalidation provision in section 6.031(b); and if the resolution is no longer valid, whether the annual voting for the appointment of appraisal district directors should now be conducted via the formulaic method provided in Texas Tax Code §6.03(d).

Dear Attorney General Paxton:

Pursuant to the authority to issue advisory opinions granted to the Attorney General in §22 of Article IV of the Texas Constitution and §402.041, *et seq.* of the Texas Government Code, this letter is being submitted to you on behalf of Granbury ISD to request an opinion regarding certain provisions of the Texas Tax Code.

BACKGROUND

How CAD Board of Directors are Appointed by the Taxing Units

A Central Appraisal District (“CAD”) is governed by a board of directors (“CAD Board”) typically consisting of five directors.¹ The directors are selected by appointment through a voting process whereby statutorily qualified taxing units within the CAD’s jurisdiction make nominations and cast votes for candidates in the fall of odd-numbered years. See Tax Code §6.03. The statutes governing the composition, appointment, eligibility, and terms of the board of directors are in the Texas Tax Code sections 6.03 through 6.035.

The voting entitlement of the taxing units entitled to vote is established by Texas Tax Code section 6.03(d), and summarized by the Texas Comptroller in the Director’s Manual as follows:

The voting entitlement of a taxing unit is determined by a calculation that takes into account a taxing unit’s share of the total dollar amount of property taxes imposed in the CAD. [Tex. Tax Code §6.03(d).] The chief appraiser makes this calculation for each taxing unit (other than conservation and reclamation districts) and delivers written notice before Oct. 1 of each odd-numbered year of the number of votes to which each taxing unit is entitled. [Tax Code §6.03(e).] (Emphasis added.)

This voting method is known as the statutory default formula method for determining a taxing unit’s entitlement to vote, and is more specifically described in Section 6.03(d), as follows:

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit participating in two or more districts is entitled to vote in each district in

¹ The governance and procedures for the operation of a CAD Board of Directors is described in the manual published by the Texas Comptroller of Public Accounts titled “Appraisal District Director’s Manual, February 2018” and is available at: <https://comptroller.texas.gov/taxes/property-tax/board-of-directors/index.php>

which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district.

The statutory default formula in essence results in voting entitlement generally equal to the relative percentage of the overall tax levy by all taxing units in the CAD, and may be restated mathematically as:

$$\begin{aligned} & \text{(the total dollar amount of property taxes imposed in the district by the} \\ & \quad \text{taxing unit for the 2018 tax year)} \\ & \quad \div \\ & \text{(the sum of the total dollar amount of property taxes imposed in the district} \\ & \quad \text{for that year by each taxing unit that is entitled to vote)} \\ & \quad = \\ & \quad \text{Quotient} \\ & \quad \quad \times \\ & \quad \quad 1,000 \text{ (rounded to nearest whole \#)} \\ & \quad \quad = \\ & \quad \quad \text{Initial Vote Allowance} \\ & \quad \quad \quad \times \\ & \quad \quad \quad \text{Number of Directorships to be Filled} \\ & \quad \quad \quad = \\ & \quad \quad \quad \text{TOTAL Votes Allowed by the Entity} \end{aligned}$$

The statutory default formula method for voting entitlement may be changed by either (1) the CAD board of directors pursuant to Tax Code §6.031(a); or (2) by the taxing units under certain circumstances described in Tax Code §6.031(b).

Tax Code section 6.031(a) allows the CAD board of directors to “change the method or procedure for appointing members” (which presumably includes the voting entitlement) unless the governing body of a taxing unit entitled to vote on the appointment of board members adopts a resolution opposing the change and files it with the CAD board of directors before September 1.

Similarly, Tax Code section 6.031(b) allows the participating taxing units to “change the method or procedure for appointing members” (which presumably includes the voting entitlement) if the governing bodies of three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt a resolution providing for the change. However, there is a *caveat* and exception to the three-fourths rule in section 6.031(b) that states:

(b) . . . However, a change under this subsection [adopted via the three-fourths rule] is *not valid* if it reduces the voting entitlement of one or more taxing units that do not adopt a resolution proposing it to less than a majority of the voting entitlement under Section 6.03 of this code [the default entitlement amount] or if it reduces the voting entitlement of any taxing unit that does not adopt a resolution proposing it to less than 50 percent of its voting entitlement under Section 6.03 of this code [the default entitlement amount] and if that taxing unit's allocation of the budget is not reduced to the same proportional percentage amount, or if it expands the types of taxing units that are entitled to vote on appointment of board members.

How the Hood County CAD Board of Directors has been Appointed Since 1988

The Hood County CAD Board is currently a five-member board and has been since at least as far back as 1988.² In 1988, a resolution was passed concerning the voting method of the CAD Board by four of the five entities in the CAD. In 1988, the taxing units entitled to vote in the Hood County CAD consisted of only five entities - Hood County, Granbury ISD, City of Granbury, Lipan ISD and Tolar ISD. Each of the five entities except City of Granbury passed the resolution. *See* Exhibits B (Resolutions of 4 Entities) and C (City of Granbury Minutes Failing Resolution). Thus, at that time it met the statutory required three-fourths approval of the taxing units entitled to vote in order to change the method of voting.

The 1988 resolution provided for a voting entitlement described as a "one-entity/one-vote" rule. In other words, as stated in the resolution, "each voting taxing entity participating in [the CAD] may nominate by resolution adopted by its governing body *one candidate for each position* to be filled on the board of directors....[and] *shall cast one vote for each position* to be filled...[and] the candidates who receive the largest cumulative vote totals [are] elected..." *See* Exhibit B.

Since 1988, the Hood County CAD Board has been appointed by this "one-entity/one-vote" method. As a result, each taxing entity entitled to vote has had equal power in determining the CAD Board despite significant differences in the relative amount of taxes levied by each entity. In addition, under this scheme, entities have the ability to consolidate their one vote for a particular candidate, or even "trade" votes for one another's candidates and influence the appointments by using block voting. Furthermore, today the CAD consists of 11 voting entities and even though the additional six entities have never adopted the 1988 resolution, the CAD continues to operate under the one-entity/one-vote scheme applied to all 11 entities.

² The current board is shown on the Hood County CAD website (*See* Exhibit A): <http://iswdataclient.azurewebsites.net/webBod.aspx?dbkey=hoodcad&time=201907261125035>

The Effects of HB 1010 (2007 Legislative Session)

HB 1010 was primarily meant to address a practical problem present in many counties in Texas whereby the law at the time allowed two appraisal districts to appraise a single property if the property is within the jurisdiction of at least one of the taxing entities from each appraisal district. As a result, property owners were required to submit paperwork to both districts, and there were many inefficiencies from overlapping jurisdictions due to resources being used in appraising property already assessed by a qualified employee of another central appraisal district.

HB 1010 required the chief appraisers who were responsible for appraising the real property located partially inside the boundaries of more than one appraisal district to coordinate their appraisals of each portion of the property to the greatest extent practicable to ensure that to the greatest extent possible the property as a whole is appraised at its market value.

In addition, HB 1010 caused CAD memberships in some counties to change across the state as taxing entities were required to become a member of any CAD whose jurisdictional boundaries crossed the entities boundaries. For example, Granbury ISD is a member of four different CADs in four counties with properties taxed by it. It is believed that at some point after the passage of HB 1010, the Hood County CAD went from five taxing units entitled to vote on the CAD Board appointments to 11 taxing units entitled to vote after HB 1010.³ The pre-HB 1010 five members were Hood County, Granbury ISD, City of Granbury, Lipan ISD and Tolar ISD. After HB 1010, the membership increased to 11 entities being entitled to vote – the original five plus the City of Lipan, City of Tolar, Bluff Dale ISD, Glen Rose ISD, Godley ISD, and AMUD Defined Area.⁴ See Exhibit D.

HB 1010 was also very specific on voting entitlements for the upcoming tax year 2008, and it specifically *did not allow for* the types of voting schemes set up by the 1988 resolution. Of particular significance is Section 6 of HB 1010, which states in pertinent part:

SECTION 6.

(a) The changes in law made by this Act relating to the appraisal of property for ad valorem tax purposes apply only to the appraisal of property for a tax year that begins on or after January 1, 2008.

³ It is unclear exactly when the Hood County CAD membership added the additional six entities. Regardless, it is indisputable that there were five when the 1988 resolution was adopted by four of the five, and that today, there are 11 entities entitled to vote on CAD Board appointments.

⁴ A listing of the 2018 Tax Rates within Hood County list the taxing units in the Hood County CAD on its website at:
<http://iswdataclient.azurewebsites.net/webTaxRates.aspx?dbkey=hoodcad&time=201907261603010>

(b) The term of each appraisal district director in an appraisal district described by Section 6.025, Tax Code, as that law existed immediately before September 1, 2007, serving a staggered term that but for this subsection would expire after January 1, 2008, expires on January 1, 2008. The appraisal district board of directors shall fill the vacant directorships as soon as practicable after January 1, 2008, as provided by Section 6.03(i), Tax Code.

(c) *Notwithstanding Section 6.03 [where the three-fourths rule is stated]*, Tax Code, a taxing unit is entitled to vote in 2007 for appraisal district directors for terms beginning on January 1, 2008, in each appraisal district in which the taxing unit will participate in 2008 *under the law as amended by this Act*. The voting entitlement of each taxing unit entitled to vote for directors in 2007 is determined for each appraisal district by [the statutory formula default method stated as]:

(1) dividing the total dollar amount of property taxes imposed by the taxing unit for the 2006 tax year in the county for which the appraisal district is established by the sum of all the total dollar amounts of property taxes imposed in that county for that year by each taxing unit that is entitled to vote for directors of that appraisal district under this subsection in 2007;

(2) multiplying the quotient by 1,000;

(3) rounding the product to the nearest whole number; and

(4) multiplying the result by the number of directorships to be filled.

....
SECTION 7.

(a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2008.

(b) This section and *Section 6 of this Act take effect September 1, 2007*.

See Exhibit E. [Emphasis added.]

Thus, it appears clear in the plain language of HB 1010 that any prior changes to the method of voting or the number of directors made pursuant to Tax Code §6.03 (such as the 1988 resolution) were invalidated if inconsistent with the voting entitlement method specifically laid out in Section 6(c) of HB 1010.

First, the section states "*notwithstanding section 6.03*" – in other words, "despite what the three-fourths rule may allow." Second, it states specifically that "a taxing unit is entitled to vote in 2007 for appraisal district directors for terms beginning on January 1, 2008 . . . *under the law as amended by this Act*." In other words, the law changed immediately such that voting in the fall of 2007 should have been done by the statutory formula default method. Third, "[t]he voting entitlement of each taxing unit entitled to vote for directors in 2007 is determined for each appraisal district by...[the statutory formula default method]." Finally, HB 1010 is very specific that Section 6 is to take effect

September 1, 2007, to allow for voting entitlements to proceed immediately to affect the appointments for the 2008 tax year.

As a result of HB 1010, it appears the 1988 resolution (and the one-entity/one-vote method) was invalidated or superseded by HB 1010. Under HB 1010, it appears clear that the intent of the Legislature was to perform all 2007 CAD Board appointments under the new law despite what other methods may have been allowable under Tax Code 6.03. In other words, the only way to appoint a CAD Board in Hood County in the fall of 2007 was to use the statutory formula default voting entitlement method and NOT use any other method (such as the one-entity/one-vote method) previously created by the 1988 resolution under Tax Code 6.03.

It also seems logical that once the 1988 resolution was deemed invalid by HB 1010, if the Hood County CAD wanted to revert back to the one-entity/one-vote method, it would have to pass a new resolution and receive a three-fourths vote of all 11 entities entitled to vote after HB 1010 in accordance with Tax Code section 6.031.

To date, the 1988 resolution has not been amended or renewed. The CAD has continued to operate under the 1988 resolution and the "one-entity/one-vote" method as though HB 1010 were never passed, and as if the six new entities had approved it. Moreover, Granbury ISD recently specifically took formal action to rescind the 1988 resolution and filed it with the Hood County CAD. *See Exhibit F.* Thus, it appears that HB 1010 invalidated the 1988 resolution and the Hood County CAD should be using the statutory formula default method of voting entitlement as provided in Tax Code §6.03(d).

Section 6.031(b) may also prohibit a one-entity/one-vote scheme in Hood County

Regardless of the apparent effect of HB 1010 to invalidate the 1988 resolution, Tax Code section 6.031(b) may, by its own terms, further prohibit the one-entity/one-vote scheme in light of the fact that Granbury ISD recently rescinded its approval of the 1988 resolution. *See Exhibit F.* In 2018, Granbury ISD overwhelmingly had the largest tax levy of all the taxing unit's entitled to vote – over 62% of total levy of all Hood County taxing units. *See Exhibit G.* However, the Hood County CAD and Chief Appraiser continue to assert that the 1988 resolution is still valid, giving Granbury ISD one vote out of 11 (or about 9 percent of the voting entitlement) where otherwise it would have nearly 63 percent of the voting entitlement.

Section 6.031(b) states:

(b) The taxing units participating in an appraisal district may increase the number of members on the board of directors of the district to not more than 13, change the method or procedure for appointing the members, or both, if the governing bodies of three-fourths of the taxing units that are entitled to

vote on the appointment of board members adopt resolutions providing for the change. However, a change under this subsection is *not valid* if it reduces the voting entitlement of one or more taxing units that do not adopt a resolution proposing it to less than a majority of the voting entitlement under Section 6.03 of this code *or* if it reduces the voting entitlement of any taxing unit that does not adopt a resolution proposing it to less than 50 percent of its voting entitlement under Section 6.03 of this code and if that taxing unit's allocation of the budget is not reduced to the same proportional percentage amount, or if it expands the types of taxing units that are entitled to vote on appointment of board members.

This provision appears to possibly invalidate the continuation of the 1988 resolution regardless of whether HB 1010 invalidated it. In fact, the 1988 resolution reduces Granbury ISD's voting entitlement from about 63 percent of the vote to about 9 percent of the vote. Nine percent is well below the majority reduction threshold (which would be about 31.5% under section 6.031(b) stated above).

Accordingly, the rescission of the 1988 resolution coupled with the violation of the majority entitlement threshold in section 6.031(b) seems to invalidate the 1988 resolution and the one-entity/one-vote scheme by the very terms of section 6.031(b). As a result, the 1988 resolution voting scheme appears to be invalid for the 2019 CAD Board appointments upcoming in the fall of 2019. Instead, it appears the statutory default formula voting entitlement should apply to determine the relative voting entitlement of each of the 11 participating taxing units in the Hood County CAD. The only way it could be changed would be through a new valid resolution on the voting method passed by at least three-fourths of the current CAD members under Tax Code section 6.031.

Based on the above factual background and arguments, it is respectfully requested that the Attorney General issue an opinion on the following questions presented.

QUESTIONS PRESENTED

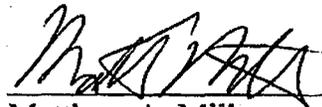
1. Whether the 1988 resolution approved by over three-fourths of the taxing entities entitled to vote for appraisal district directors was invalidated by 2007 legislation (HB 1010) which allowed for only one statutory formulaic method for determining voting entitlements?
2. Whether the fact that the 1988 resolution has not been renewed or amended since the 2007 legislation makes it no longer valid?
3. Whether the rescission of the 1988 resolution by Granbury ISD (bringing its approval to less than three-fourths) and the fact that the one-entity/one-vote scheme (if allowed) reduces Granbury ISD's voting entitlement to

less than 50 percent of what it would otherwise be under section 6.03 (the formulaic default method) triggers the invalidation provision in section 6.031(b)?

4. If the 1988 resolution is no longer valid, whether the annual voting for the appointment of appraisal district directors should now be conducted via the formulaic method provided in Texas Tax Code §6.03(d)?

Thank you for your time and consideration with regard to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,



Matthew A. Mills
Hood County Attorney