



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 3, 1995

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 95-060

Re: Whether a property owner who is blind, under fifty-five years of age, and employed full-time qualifies for additional homestead exemptions under section 11.13, subsections (c) and (d) of the Tax Code (RQ-796)

Dear Mr. Driscoll:

You ask whether a property owner who is blind, under fifty-five years of age, and employed full-time qualifies for additional homestead exemptions under section 11.13, subsections (c) and (d) of the Tax Code. Subsections (c) and (d) of section 11.13 provide as follows:

(c) In addition to the exemption provided by Subsection (b) of this section, an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of \$10,000 of the appraised value of his residence homestead.

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead if the exemption is adopted either:

- (1) by the governing body of the taxing unit; or
- (2) by a favorable vote of a majority of the qualified voters of the taxing unit

The answer to your question depends upon whether a person who is blind, under fifty-five years old, and employed full-time is "disabled" for purposes of the foregoing provisions.

Subsection (m)(1) of section 11.13 of the Tax Code provides that the term "disabled" as used in section 11.13 "means under a disability for purposes of payment of

disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.” This definition reflects section 1-b, subsections (b) and (c) of article VIII of the Texas Constitution, which authorize the homestead exemptions:

The governing body of [various entities] may exempt by its own action not less than Three Thousand Dollars (\$3,000) of the market value of residence homesteads of persons, married or unmarried, including those living alone, who are under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor

Tex. Const. art. VIII, § 1-b(b); *see also id.* § 1-b(c) (“[T]he legislature by general law may exempt an amount not to exceed Ten Thousand Dollars (\$10,000) of the market value of the residence homestead of a person who is disabled as defined in Subsection (b) of this section”).

In Attorney General Opinion MW-26 (1979), this office considered whether the homestead exemptions apply to “persons eligible under both the Federal Old-Age, Survivors, and Disability Insurance program [42 U.S.C. §§ 401 - 431] and Supplemental Security Income program’s Aid to the Blind and Aid to the Totally and Permanently Disabled [42 U.S.C. §§ 1381 - 1383c].” This office concluded that article VIII, section 1-b(b) clearly adopts the definition of disability included in the Federal Old-Age, Survivors, and Disability Insurance Benefits statute, 42 U.S.C. § 423(d)(1). Attorney General Opinion MW-26 (1979) at 1. The opinion further noted, however, that to be eligible for a homestead exemption, a person need not actually receive benefits under the federal statute: “We believe this constitutional provision merely incorporates the definition of disability found in the Old Age and Survivors Act or its successor as a means of determining who is disabled for purposes of receiving the permissive homestead tax exemption.” *Id.* at 2.

Section 423(d) of title 42 of the United States Code, the specific federal statute referred to in Attorney General Opinion MW-26, provides as follows:

(1) The term “disability” means--

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)--

(A) An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy

42 U.S.C. § 423(d). Section 416(i)(1), referred to above, provides as follows:

Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

42 U.S.C. § 416(i)(1) (emphasis added). There appears to be no dispute that the property owner at issue is "engaged in substantial gainful activity" for purposes of title 42 of the United States Code, section 423(d)(1)(A),¹ and is "blind" for purposes of title 42 of the United States Code, section 416(i)(1).

You contend that despite the fact that he is blind, the property owner at issue is not disabled, as that term is defined in title 42 of the United States Code, section

¹The property owner is under 55 years of age, lost his vision at the age of six, has been employed by the Houston Independent School District ("HISD") since 1978, and is currently employed by HISD as a full-time teacher.

423(d)(1)(A), because he is under fifty-five years of age and engaged in substantial gainful activity for purposes of that statute. The property owner, however, contends that he is entitled to the homestead exemptions because he is disabled for purposes of 42 U.S.C. § 416(i)(1) by virtue of his blindness notwithstanding the fact that he is fully employed. You state that "the prevailing view is that only the definition found in section 423 applies because that is the section used to determine disability for purposes of receiving disability benefits. The other, section 416, applies for other purposes but specifically does not apply to determination of eligibility for disability benefits."

We agree with your position. The Texas Constitution provides that the homestead exemptions at issue are available only to those persons who are "under a disability for purposes of *payment* of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor." Tex. Const. art. VIII, § 1-b(b) (emphasis added); *see also id.* § 1-b(c). Section 423 governs the payment of disability benefits under the relevant federal program and defines the term "disability" for the purposes of payment of disability benefits. A person who is under the age of fifty-five, blind under section 416(i)(1), and engaged in substantial gainful activity is treated specially under the federal statute, but is not paid disability benefits. As the relevant federal regulations explain:

If you are under age 55, we will evaluate the work you are doing using the guides in paragraph (d) of this section to determine whether or not your work shows that you are doing substantial gainful activity. If you are not doing substantial gainful activity, we will pay you cash benefits. *If you are doing substantial gainful activity, we will not pay you cash benefits. However, you will be given a period of disability² as described in subpart D of this part.*

20 C.F.R. § 404.1584(b) (emphasis and footnote added). *See generally id.* §§ 404.1581 - .1587. In sum, a blind person who is under the age of fifty-five and who engages in substantial gainful activity is not "under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor" for purposes of the Texas Constitution, *see* Tex. Const. art. VIII, § 1-b(b); *see also id.* § 1-b(c), or section 11.13(m)(1) of the Tax Code. Therefore, a property owner who is blind, under the age of fifty-five, and engages in substantial gainful activity is not entitled to a homestead exemption under section 11.13, subsections (c) and (d) of the Tax Code.

²*See* 20 C.F.R. § 404.1582 ("A period of disability protects your earnings record under Social Security so that the time you are disabled will not count against you in determining whether you will have worked long enough to qualify for benefits and the amount of your benefits.").

The conclusion in Attorney General Opinion MW-26 that a person need not actually receive benefits under the federal statute to be eligible for a homestead exemption is not to the contrary. That opinion simply noted that whether a person who is disabled for purposes of payment of insurance benefits actually receives benefits is not dispositive. What is dispositive is whether the person is "under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor." A blind person under the age of fifty-five who engages in substantial gainful activity does not meet that standard.

S U M M A R Y

A blind person under the age of fifty-five who is engaged in "substantial gainful activity" under title 42 of the United States Code, section 423(d), is not "under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance or its successor," Tex. Const. art. VIII, § 1-b(b); *see also id.* § 1-b(c); Tax Code § 11.13(m)(1), and is therefore not entitled to a homestead exemption under section 11.13, subsections (c) and (d) of the Tax Code.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee