



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 12, 1995

Honorable John W. Berry
Karnes County Attorney
101 North Panna Maria, Suite 10
Karnes City, Texas 78118

Letter Opinion No. 95-062

Re: Whether Attorney General Opinion
JM-74 (1983) regarding section 6.06(e) of
the Tax Code continues to be valid, and
related question (ID# 31221)

Dear Mr. Berry:

You ask two questions regarding section 6.06(e) of the Tax Code, which provides the schedule according to which taxing units participating in an appraisal district must pay their allocated portion of the appraisal district budget to the chief appraiser:

1. Section 6.06(e) states that the governing body of a unit and the chief appraiser may agree to a different method of payment. Can this agreement be made at any time?
2. Is [Attorney General Opinion] JM-74 still a valid opinion?

We answer your questions in reverse order.

Section 6.06(e) of the Tax Code provides as follows:

Unless the governing body of a unit and the chief appraiser agree to a different method of payment, each taxing unit shall pay its allocation in four equal payments to be made at the end of each calendar quarter, and the first payment shall be made before January 1 of the year in which the budget takes effect. A payment is delinquent if not paid on the date it is due. A delinquent payment incurs a penalty of 5 percent of the amount of the payment and accrues interest at an annual rate of 10 percent. If the budget is amended, any change in the amount of a unit's allocation is apportioned among the payments remaining.

Section 6.06(e) was enacted in 1979, *see* Act of May 24, 1979, 66th Leg., R.S., ch. 841, § 1, 1979 Tex. Gen. Laws 2217, 2226-27, and last amended in 1981, *see* Act of August 10, 1981, 67th Leg., 1st C.S., ch. 13, § 17, 1981 Tex. Gen. Laws 117, 122.

In Attorney General Opinion JM-74 (1983), this office considered whether an appraisal district may waive or rescind the penalty and interest imposed by section 6.06(e) on a taxing unit that tenders a delinquent payment. The opinion concluded that an appraisal district was without authority to waive or rescind the statutorily mandated

penalty and interest under any circumstances because such authority must be expressly provided by the legislature and the legislature had not provided such express authority in section 6.06(e) or elsewhere.

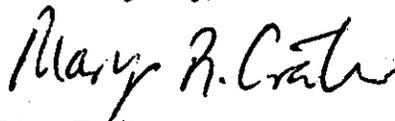
You have not suggested any reason for us to reconsider the validity of Attorney General Opinion JM-74. As noted above, section 6.06(e) has not been amended since that opinion was issued in 1983, nor are we aware of any other legislative enactments which would change the result in that opinion. In addition, we have been unable to locate any intervening judicial decisions or attorney general opinions which cast doubt on Attorney General Opinion JM-74. Therefore, in answer to your question about its continued validity, we reaffirm Attorney General Opinion JM-74.

You also ask whether an agreement between the governing body of a taxing unit and a chief appraiser providing for a different method of payment may be made at any time. We gather you intend to ask about the first sentence of section 6.06(e) which provides that "[u]nless the governing body of a unit and the chief appraiser agree to a different method of payment, each taxing unit shall pay its allocation in four equal payments to be made at the end of each calendar quarter, and the first payment shall be made before January 1 of the year in which the budget takes effect." Section 6.06(e) places no time limitations on such agreements. We therefore conclude that an agreement between the governing body of a taxing unit and a chief appraiser providing for a different method of payment may be made at any time with one proviso. For the reasons stated in Attorney General Opinion JM-74, an agreement may not have the effect of waiving or rescinding penalties and interest due on payments that are already past due and therefore delinquent.

S U M M A R Y

There has been no change in the law which would invalidate Attorney General Opinion JM-74 (1983). That opinion continues to be valid. An agreement between the governing body of a taxing unit and a chief appraiser providing for a different method of payment under section 6.06(e) of the Tax Code may be made at any time but may not have the effect of waiving or rescinding penalties and interest due on payments that are already past due and therefore delinquent.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee