



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 24, 1997

The Honorable Marcus D. Taylor  
Wood County Criminal District Attorney  
P.O. Box 689  
Quitman, Texas 75783

Letter Opinion No. 97-041

Re: Whether an appraisal district may retain Tax Code section 31.08(a) tax certificate fees, and related questions (ID# 39272)

Dear Mr. Taylor:

On behalf of the Wood County Appraisal District (the "appraisal district") and the City of Mineola (the "city"), you ask whether an appraisal district may retain Tax Code section 31.08(a) tax certificate fees. You state that the appraisal district collects ad valorem taxes for a number of taxing units located within its boundaries and that it collected taxes for the city for a one-year period ending September 30, 1996. Apparently, the appraisal district has historically retained tax certificate fees and has used the revenues to reduce the amount of funds it collects from the participating taxing units under Tax Code section 6.06(d), which, in essence, requires each taxing unit to contribute to the appraisal district budget according to a statutory formula.<sup>1</sup> You ask whether the appraisal district and a taxing unit may agree by contract that the appraisal district retain the tax certificate fees. You also ask if the contract at issue between the appraisal district and the city provides for "such retention."

You assert that Tax Code section 31.08(a) permits the appraisal district to retain the tax certificate fees and that the city contractually agreed to permit the appraisal district to retain the fees, relying on Tax Code sections 1.04(12), 6.06, 6.24, and 31.08(a). Section 31.08(a) provides as follows:

(a) At the request of any person, a collector for a taxing unit shall issue a certificate showing the amount of delinquent taxes, penalties, and interest due the unit on a property according to the unit's current tax records. If the collector collects taxes for more than one taxing unit, the certificate must show the amount of delinquent taxes, penalties, and interest due on the property to each taxing unit for which the collector collects the taxes. The collector shall charge a fee not to exceed \$10 for each certificate issued. *The*

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<sup>1</sup>See Tax Code § 6.06(d) ("Each taxing unit participating in the district is allocated a portion of the amount of the budget equal to the proportion that the total dollar amount of property taxes imposed in the district by the unit for the tax year in which the budget proposal is prepared bears to the sum of the total dollar amount of property taxes imposed in the district by each participating unit for that year.").

*collector shall pay all fees collected under this section into the treasury of the taxing unit that employs him. [Emphasis added.]*

You suggest that the last sentence of section 31.08(a) authorizes the appraisal district to retain the tax certificate fees, relying upon the use of the word “employs.” You suggest that because the chief appraiser of the appraisal district is employed by the appraisal district, the chief appraiser is required to deposit the tax certificate fees in the treasury of the appraisal district. We disagree.

The statute refers to the treasury of the “taxing unit.” Tax Code section 1.04(12) defines a taxing unit as follows:

“Taxing unit” means a county, an incorporated city or town (including a home-rule city), a school district, a special district or authority (including a junior college district, a hospital district, a district created by or pursuant to the Water Code, a mosquito control district, a fire prevention district, or a noxious weed control district), or any other political unit of this state, whether created by or pursuant to the constitution or a local, or special, or general law, that is authorized to impose and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs.

A taxing unit by definition is an entity that “*is authorized to impose and is imposing ad valorem taxes on property.*” An appraisal district itself does not have the authority to impose taxes and is therefore not a taxing unit. *See* Tax Code ch. 6, subch. A (establishing appraisal districts); *see also* Attorney General Opinion JM-919 (1988) at 2 (appraisal district is not authorized to impose taxes and is therefore not a taxing unit as defined by Tax Code section 1.04(12)). We do not believe that the fact that an appraisal district is authorized to collect taxes for taxing units pursuant to a contract transforms the appraisal district into a taxing unit. Such derivative authority is not the authority to impose taxes but rather merely to collect them.

Because the phrase “treasury of the taxing unit” cannot possibly refer to the treasury of an appraisal district, we conclude that section 31.08(a) requires a chief appraiser of an appraisal district to pay a tax certificate fee into the treasury of the taxing unit for which the chief appraiser collects the taxes at issue on the certificate. If the certificate pertains to taxes of more than one taxing unit, the fee must be distributed among the taxing units. Section 31.08(a) neither requires nor permits the chief appraiser of an appraisal district to retain tax certificate fees.<sup>2</sup>

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<sup>2</sup>We do not address the retention of section 31.08(a) tax certificate fees by tax collectors other than appraisal districts.

You also suggest that Tax Code section 6.06(d) somehow obligates taxing units participating in an appraisal district to relinquish tax certificate fees to the appraisal district. We disagree. Section 6.06 is located in subchapter A of chapter 6 of the Tax Code. Subchapter A governs an appraisal district's appraisal duty, which is to appraise "property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district." Tax Code § 6.01(b). Section 6.06(d) ensures that an appraisal district will have adequate funds to carry out its appraisal duty by requiring all participating taxing units to contribute to its budget. The provisions authorizing a taxing unit to contract with an appraisal district to assess and collect taxes, including section 6.24(a) discussed below, are located in subchapter B of chapter 6, which deals with assessors and collectors. A taxing unit is not required to select the appraisal district that provides it with appraisal services to assess and collect its taxes nor is an appraisal district required to assess and collect taxes for the taxing districts for which it provides appraisal services. Because an appraisal district will not necessarily collect taxes for all the taxing units obligated to contribute to its appraisal operating budget under section 6.06, the legislature could not have intended section 6.06 to require all participating taxing units to relinquish tax certificate fees to the appraisal district.<sup>3</sup>

Your query also requires us to examine whether an appraisal district and a taxing unit are authorized to enter into an agreement whereby the taxing unit agrees that the appraisal district may retain tax certificate fees. Tax Code section 6.24(a) authorizes the governing body of a taxing unit (other than a county) to contract with the board of directors of an appraisal district "to perform duties relating to the assessment or collection of taxes" as provided by the Interlocal Cooperation Act, Gov't Code ch. 791. The Interlocal Cooperation Act provides that an interlocal contract must, among other things, be in an amount that fairly compensates the performing party for the services or functions performed under the contract and must specify that the paying party make payments from current revenues. *Id.* § 791.011(d)(3), (e). We believe that these provisions taken together authorize a taxing unit to contract with an appraisal district to collect the taxing unit's taxes and to compensate

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<sup>3</sup>It may be the case that all taxing units that contribute to the budget of an appraisal district under Tax Code section 6.06(d) have also entered into a contract with the appraisal district for tax assessment and collection. As noted above, Tax Code section 6.06(d) requires each taxing unit that participates in an appraisal district to contribute to the appraisal district's budget according to a statutory formula. The amount of each taxing unit's contribution is based on its pro rata share of the total amount of property taxes imposed in the district. *See supra* note 1; *see also* Tax Code § 6.061(a) (authorizing appraisal district board of directors to prescribe different method of allocating costs unless governing body of any taxing unit objects), (b) (authorizing taxing units in appraisal district to adopt different method of allocating costs). It may be permissible for an appraisal district and a taxing unit to enter into a contract for tax assessment and collection under which the appraisal district's compensation is established pursuant to the section 6.06(d) formula, provided that such compensation otherwise satisfies section 6.24 and the Interlocal Cooperation Act, Gov't Code ch. 791. As noted below, however, a tax assessment and collection contract that addresses compensation with merely a reference to section 6.06(d) will not expressly allocate section 31.08(a) tax certificate fees.

the appraisal district in part with tax certificate fees to which the taxing unit would otherwise be entitled. Of course, such a contractual agreement must be clearly expressed. *See id.* § 791.011(d)(2) (interlocal contract must “state the purpose, terms, rights, and duties of the contracting parties”).<sup>4</sup>

In sum, neither section 31.08(a) nor section 6.06(d) permit or require an appraisal district to retain section 31.08 tax certificate fees. A taxing unit that enters into a contract with an appraisal district for tax assessment and collection under section 6.24(a) may compensate the appraisal district in part with tax certificate fee revenues to which the taxing unit would otherwise be entitled. Such a contractual agreement must be clearly expressed. You state that the contract between the appraisal district and the city requires the city to pay the district a sum based on section 6.06(d).<sup>5</sup> Given our conclusion that 6.06(d) does not address the allocation of tax certificate fees, we do not believe such a contractual provision standing alone would obligate a taxing unit to relinquish its right to tax certificate fees to the appraisal district. Thus, in answer to your specific questions, the appraisal district and a taxing unit may agree by contract that the appraisal district will retain the tax certificate fees. Based on the information you have provided, however, it does not appear that the contract between the appraisal district and the city expressly authorizes the appraisal district to retain the tax certificate fees to which the city is entitled. Although we conclude as a matter of law that the contract provision upon which you rely<sup>6</sup> does not authorize the appraisal district to retain tax certificate fees, a finder of fact with access to the complete contract and a fully-developed record might reach a different conclusion.<sup>7</sup>

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<sup>4</sup>Although Tax Code section 31.08(a) precludes an appraisal district from unilaterally retaining tax certificate fees, we do not believe that it precludes a taxing unit from contracting away its right to such fees.

<sup>5</sup>You quote the contract as follows:

The taxing unit agrees to pay the district . . . the cost of \$\_\_\_ (which sum varies, taxing unit to taxing unit, based essentially upon a Section 6.06(d) calculation) [for] performing the services specified above. These costs shall be allocated among the taxing unit[s] contracting for assessment and collection services under Section 6.06(d) of the Property Tax Code.

<sup>6</sup>*See id.*

<sup>7</sup>Because contract interpretation often requires the resolution of fact issues, a function that is beyond our purview, this office generally refrains from construing contracts. The contract provision you have quoted, however, merely requires us to construe section 6.06(d). *See id.*

**S U M M A R Y**

Neither section 31.08(a) nor section 6.06(d) of the Tax Code permit or require an appraisal district to retain section 31.08 tax certificate fees. A taxing unit that enters into a contract with an appraisal district for tax assessment and collection under Tax Code section 6.24(a) may compensate the appraisal district in part with tax certificate fee revenues to which the taxing unit would otherwise be entitled. Such a contractual agreement must be clearly expressed.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee