



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1998

Mr. Mike Moses  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Letter Opinion No. 98-050

Re: Liability of independent school district for  
taxes collected in excess of maximum main-  
tenance tax rate adopted by voters (RQ-1091)

Dear Mr. Moses:

You seek advice concerning the maintenance tax collected by the Hawkins Independent School District (the "Hawkins ISD"). Section 45.002 of the Education Code authorizes the governing board of an independent school district to "levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools in the district, subject to Section 45.003." According to section 45.003 of the Education Code, taxes described by section 45.002 "may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election held for that purpose." Moreover,

[a] proposition submitted to authorize the levy of maintenance taxes must include the question of whether the governing board or commissioners court may levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools, at a rate not to exceed the rate, which may be not more than \$1.50 on the \$100 valuation of taxable property in the district, stated in the proposition.<sup>1</sup>

The board of trustees of a school district may not levy a maintenance tax greater than the rate authorized by election.<sup>2</sup>

You inform us that a maximum maintenance tax rate for the Hawkins ISD of \$1.25 per \$100 valuation of taxable property was authorized by an election held in 1964. The voters have not increased the maximum maintenance tax rate since that time, but the Board of Trustees of the Hawkins ISD, unaware of the action of the electorate in 1964, set the annual maintenance tax rate

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<sup>1</sup>Educ. Code § 45.003(d).

<sup>2</sup>Attorney General Opinion V-364 (1947); see Attorney General Opinion WW-545 (1959).

in excess of \$1.25 in each year from 1993 through 1997. In the context of these facts you first ask the following question:

Has any Legislative action since 1964 to set, increase, or recodify the maximum allowable maintenance tax rate for independent school districts had the effect of superseding a maximum voted maintenance tax rate set by local public election?

We have found no statute that supersedes the maximum voted maintenance tax rate set by the Hawkins ISD in 1964, and you have cited none.

You next ask:

Assuming a negative answer to the first question, and assuming no protest has been filed by any taxpayer on the basis of excessive levy, is the District liable to its taxpayers for any amount collected in excess of the maximum voted maintenance tax rate adopted in 1964?

Case law establishes that “[o]ne who pays an illegal tax voluntarily . . . has no valid claim for its repayment.”<sup>3</sup> The object of this rule is to discourage litigation and to secure the taxing authority in the orderly conduct of its affairs.<sup>4</sup> A mistake of law does not excuse a taxpayer from the consequences of voluntary payment of tax without protest, because everyone is presumed to know the law.<sup>5</sup> Section 31.115 of the Tax Code provides that

Payment of an ad valorem tax is involuntary if taxpayer indicates that the tax is paid under protest:

- (1) on the instrument by which the tax is paid; or
- (2) in a document accompanying the payment.

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<sup>3</sup>*Austin Nat'l Bank v. Sheppard*, 71 S.W.2d 242, 245 (Tex. 1934); *Texas Nat'l Bank v. Harris County*, 765 S.W.2d 823, 824 (Tex. App.--Houston [14th Dist.] 1989, writ denied) (property tax payments made under allegedly unconstitutional statute could not be recovered because they were voluntarily made).

<sup>4</sup>*Johnson Controls, Inc. v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 605 S.W.2d 688, 689 (Tex. Civ. App.--Dallas 1980, writ ref'd n.r.e.).

<sup>5</sup>*City of Houston v. Feizer*, 13 S.W. 266, 267 (1890); *Johnson Controls, Inc.*, 605 S.W.2d at 689.

A bill analysis for Senate Bill 101 of the 74th Regular Legislative Session, the legislation adopting section 31.115 of the Tax Code, provided the following background:

The doctrine of voluntary payment may be used under current Texas law to prevent an individual from filing a lawsuit with regard to the payment of ad valorem taxes. As a result of this doctrine, individuals who pay their taxes have no remedy, nor can they benefit from other successful lawsuits, if a tax is later held to be unconstitutional.<sup>6</sup>

Senate Bill 101 provided a way for the taxpayer to show that payment of an ad valorem tax is involuntary.<sup>7</sup> A taxpayer who complies with Tax Code section 31.115 is freed from the presumption of voluntary payment and may pursue any claim he or she may have for reimbursement of an illegal tax.

You ask us to assume that no taxpayer has filed the required protest. Although we cannot find facts or resolve questions of fact in the opinion process,<sup>8</sup> we can assume, for purposes of this opinion, that no taxpayer has indicated pursuant to section 31.115 that payment of the maintenance tax to the Hawkins ISD was involuntary. Accordingly, the taxpayers are deemed to have paid the maintenance tax voluntarily and now have no claim for reimbursement of any excess payment.

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<sup>6</sup>Senate Finance Comm., Bill Analysis, S.B. 101, 74th Leg., R.S. (1995).

<sup>7</sup>*Id.*; see also House Ways and Means Comm., Bill Analysis, S.B. 101, 74th Leg., R.S. (1995).

<sup>8</sup>See, e.g., Attorney General Opinions DM-98 (1992) at 3, H-56 (1973), M-187 (1968), O-2911 (1940); Open Records Decision No. 426 (1985).

S U M M A R Y

The board of trustees of a school district may not levy a maintenance tax at a rate greater than the rate authorized by the majority of the qualified voters of the district, voting at an election held for that purpose, and if it attempts to do so, the tax is illegal. A person who pays an illegal tax voluntarily has no valid claim for its repayment. A taxpayer may show that payment of an ad valorem tax is involuntary pursuant to section 31.115 of the Tax Code by indicating on the instrument by which the tax is paid or in a accompanying document that the tax is paid under protest.

Yours very truly,

A handwritten signature in black ink that reads "Susan Garrison". The signature is written in a cursive style with a small dash above the letter 'i' in Garrison.

Susan Garrison  
Assistant Attorney General  
Opinion Committee