ID# 12297
MJ

Stephen C. Howard

Orange County Attorney

Orange Courthouse *Orange, Texas 77630* *Office 409-883-7*
Facsimile 409-883-9

RQ-77

April 15, 1991

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RECEIVED

APR 25 91

Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Re: Whether the addition of taxable property due to the expiration of a tax abatement contract is considered new property and as such eliminated from the effective tax rate calculation.

Dear Honorable Dan Morales:

Please find enclosed my memorandum asking for an opinion regarding the above stated issue. Please contact me at your earliest convenience should you have further questions.

Sincerely,

Stephen C. Howard

Stephen C. Howard
County Attorney

SCH:rah

enclosure

ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY

ISSUE

Whether the addition of taxable property due to the expiration of a tax abatement contract is considered new property and as such eliminated from the effective tax rate calculation.

FACTS

To successfully compete with other regions for industrial construction and expansion projects which create economic growth and additional employment, Orange County began executing tax abatement contracts in 1986. To date Orange County has contracted with nine industries for a total of sixteen tax abatement contracts. The contract negotiations arise when the industry decides to expand its facilities and must choose a corporate location. Orange County must compete with locations throughout the United States.

If the industry chooses to expand its facilities in Orange County the county receives an employment boost. Orange County taxpayers are employed during the construction of the project and afterwards to run the new facilities. The employment boost benefits Orange County in many ways. For instance, Orange County has high indigent health care costs; however, when an increase in taxpayers are employed due to an industry adding a new facility then the indigent health care costs are lowered.

The earliest expiration date of a tax abatement contract is January 1, 1992. In 1992 Orange County for the first time will tax the new facilities built during the contract period. For all tax intents and purposes these new facilities are new property to Orange County.

ARGUMENT

It is Orange County's position that when a tax abatement contract expires, any new facilities that were built during the abatement period are considered new property in the first year they are taxed. A county's effective tax rate is the rate which will raise the same amount of taxes on the same property from one year to the next. Tex. Tax Code Ann. Sec. 26.04(c) (Vernon 1982 & Supp. 1991). Therefore, as the taxable property value in the county increases, the effective tax rate decreases and vice versa. If a county's proposed actual tax rate for a new year is greater than the effective tax rate by more than 3%, the county must publish notice and hold public hearings before it may adopt the proposed new tax rate. Id. Sec. 26.05(c). This Truth-in-Taxation requirement informs the average citizen taxpayer how that taxpayer's specific tax dollars on the exact same property will change from one year to the next. When new property is built in the county, the county's taxable property value increases the first year the new property is taxed. New property, however, does not affect the calculation of the effective tax rate. The additional taxes for the county resulting from new property are eliminated from the calculation of tax increases. Id. Sec. 26.04(c) (new property value is subtracted from current total value). Therefore, the county's requirement to publish notice and hold public hearings does not arise from new property additions to the county's taxable property value. The new property has no affect on how the average citizen's tax dollars change regarding the exact same property the taxpayer owned and paid taxes for the previous year.

To entice industry to locate and expand in Orange County, the county contracts with the industry giving them a tax abatement for a specified time period. During the contract, the industry does not pay a property tax on its new facilities. Consequently, at the expiration of the tax abatement agreement, the county will tax the industry for the first time. The industry's facilities are first time taxable property.

Section 26.012(17) of the Tax Code defines new property value as:

> "the total taxable value of property added to the appraisal roll in the current year by annexation and improvements listed on the appraisal roll that were made after January 1 of the preceding tax year, including personal property located in new improvements that was brought into the unit after January 1 of the preceding tax year."

The literal interpretation of Section 26.012(17) implies that if an industry builds new facilities pursuant to a tax abatement contract with a county, whereby the first payment of taxes on the new facility is deferred for a specified period, the county may <u>not</u> treat the value of such additions as new property in the year they are first taxed. The county can not eliminate the new facilities from the calculation of the county's effective tax rate. As a result, the addition of taxable property in the context of a tax abatement will <u>never</u> be new property. Consequently, the economic development incentives for a county to attract new industry through tax abatement contracts is seriously compromised. Furthermore, the county's effective tax rate will change by more than 3% forcing the county to publish notice and hold public hearings which will be misleading to its citizens. The average citizen's tax dollars are not changing in regards to the exact same property the taxpayer owned the previous year. The change in the effective tax rate due to an increase in taxable property value resulting from new facilities is not a true and equitable showing of the changes in the county's taxation.

CONCLUSION

The addition of taxable property; such as new and expanded industry facilities, due to the expiration of a tax abatement contract is new property.