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NOV 28 90

OPINION COMMITTEE

November 21, 1990

RQ-2177-251

Honorable Jim Mattox
Attorney General of Texas
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

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OPINION COMMITTEE

RE: Request for Attorney General's Opinion
Chambers-Liberty Counties Navigation
District and its authority to grant
tax abatements

Dear Sir:

I have been asked to obtain from your office opinions related to the above-referenced subject matter based on the following factual assumptions:

Assume that the resolution electing to become eligible to grant tax abatement and the appropriate guidelines and criteria for granting tax abatement have been formally and properly adopted by the Navigation District, that the required application has been filed with the Navigation District by Moss Bluff Gas Storage Co., Inc., that the Navigation District has approved the application for tax abatement and that Liberty County, acting through its Commissioners Court, granted tax abatement to Moss Bluff Gas Storage Co., Inc. on the same property in an agreement dated 27 November, 1990, the question presented for an opinion from the Texas Attorney General is:

Does the Navigation District have the authority to enter into a tax abatement agreement with Moss Bluff Gas Storage Co., Inc. as of 17 July 1990?

The next factual situation assumes all of the above factual situations and adds the assumption that a member of the Board of Directors of the Navigation District owns an interest in Moss Bluff Gas Storage Co., Inc. The questions then presented for an opinion from the Texas Attorney General are:

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Does the Navigation District have the authority to enter into a tax abatement agreement with Moss Bluff Gas Storage Co., Inc. if a board member of the Navigation District owns an interest in the property receiving the tax abatement?

What are the options for the Navigation District, under the circumstances presented in the last assumed factual situation?

I have received from a local attorney a brief pertaining to the questions at issue. I have attached a copy of this brief to this letter for whatever benefit it may provide.

My research has not turned up an answer to these questions.

We sincerely appreciate your assistance in this matter.

Very truly yours,



A.J. Hartel
Liberty County Attorney

AJH:pt
Enclosure

Legal Opinion Concerning the Authority
of Chambers-Liberty Counties To
Grant Tax Abatement To
Moss Bluff Gas Storage Co.

For purposes of this opinion it is assumed that the resolution electing to become eligible to grant tax abatement and the appropriate guidelines and criteria for granting tax abatement have been formally and properly adopted by the Chambers-Liberty Counties Navigation District (Navigation District), that the required application has been filed with the Navigation District by Moss Bluff Gas Storage Co., Inc. (Moss Bluff), that the Navigation District has approved the application for tax abatement and that Liberty County, acting through its Commissioners Court, granted tax abatement to Moss Bluff on the same property in an agreement dated 27 November 1990 and that a member of the Navigation District has an equity interest in Moss Bluff, the issues presented requiring legal analysis are:

- A. Does the Navigation District have the authority to enter into a tax abatement agreement with Moss Bluff Gas Storage Co., Inc. as of 17 July 1990?
- B. Does the Navigation District have the authority to enter into a tax abatement agreement with Moss Bluff Gas Storage Co., Inc. when a board member of the Navigation District owns an interest in the property receiving the tax abatement?
- C. What are the options for the Navigation District under these circumstances presented in the last assumed factual situation?

The issues will be analyzed in the order presented above.

DOES THE NAVIGATION DISTRICT HAVE THE AUTHORITY TO ENTER INTO A TAX ABATEMENT AGREEMENT WITH MOSS BLUFF GAS STORAGE CO., INC. AS OF 17 JULY 1990?

The Navigation District does not possess the authority to enter into a tax abatement agreement with Moss Bluff as of 17 July 1990. The authority of the Navigation District to tax and to grant tax abatement is derived from the Texas Constitution and the Tax Code.

The portions of Section 312.206 of the Texas Tax Code applicable to this issue read as follows:

Section 312.206 Tax Abatement by Other Taxing Units

(a) If property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement made under Section 312.204, the governing body of each other taxing unit eligible to enter into tax abatement agreements under Section 312.002 in which the property is located may execute a written agreement with the owner of the property not later than the 90th day after the date the municipal agreement is executed. The agreement must contain terms identical to those contained in the agreement with the municipality providing for the portion of the property that is to be exempt from taxation

The portions of Section 312.402 of the Texas Tax Code applicable to this issue read as follows:

Section 312.402 County Tax Abatement Agreement

(a) The commissioners court may execute a tax abatement agreement with the owners of taxable real property located in a reinvestment zone designated under this subchapter. The execution, duration, and other terms of an agreement made under this section is governed by the provisions of Sections 312.204 and 312.205 applicable to a municipality. Section 312.2041 applies to an agreement made by a county under this section in the same manner as it applies to an agreement made by a municipality under Section 312.204.

(b) A tax abatement agreement made by a county has the same effect on the school districts and other taxing units in which the property subject to the agreement is located as is provided by Sections 312.206(a) and (b) for an agreement made by a municipality to abate taxes on property located in the taxing jurisdiction of the municipality.

The underlined portions have been underlined for emphasis purposes.

Section 312.206(a) limits the time frame in which other taxing jurisdictions may enter into tax abatement agreements with entities that have completed such tax abatement agreements with a municipality. This section of the Tax Code is very straightforward and unambiguous; the other taxing jurisdictions have 90 days to complete and execute their agreement.

Section 312.204(b) states that Section 312.206(a) and (b), relating to municipalities, applies to other taxing jurisdictions in situations where a county has entered into a tax abatement agreement with a property owner in a county designated reinvestment zone.

Therefore, if the county commissioners have granted tax

abatement to an eligible property owner on eligible property, a taxing jurisdiction, eligible to grant tax abatement in a county reinvestment zone, must enter into its agreement with the property owner on or before the expiration of 90 days following the date of the county's tax abatement agreement.

In the case of the Navigation District and Moss Bluff, these parties must have consummated their agreement within 90 days following the 27 November 1989 execution date of Liberty County's agreement with Moss Bluff. The Navigation District had until 25 February 1990 to enter into its agreement with Moss Bluff. After this date, the Navigation District possessed no authority to enter into an agreement with Moss Bluff on the same property described in the agreement between Liberty County and Moss Bluff.

DOES THE NAVIGATION DISTRICT HAVE THE AUTHORITY TO ENTER INTO A TAX ABATEMENT AGREEMENT WITH MOSS BLUFF GAS STORAGE CO., INC. WHEN A BOARD MEMBER OF THE NAVIGATION DISTRICT OWNS AN INTEREST IN THE PROPERTY RECEIVING THE TAX ABATEMENT?

In addition to the portions of the Tax Code referenced in the previous question, Sections 312.204(d) and 312.402(d) apply to the question of tax abatement on property in which a member of the taxing authority granting the tax abatement has an ownership interest. Section 312.204(d) makes reference to municipalities and municipal related boards or commissions. Section 312.402(d) references county commissioners. These provisions are set forth as follows:

Section 312.204 Municipal Tax Abatement Agreement

(d) Property that is in a reinvestment zone and that is owned or leased by a member of the governing body of the municipality or by a member of a zoning or planning board or commission of the municipality is excluded from property tax abatement or tax increment financing.

Section 312.402 County Tax Abatement Agreement

(d) Property that is located in a reinvestment zone designated by a county under this subchapter and that is owned or leased by a member of the commissioners court may not be subject to a tax abatement agreement made under this section.

Chapter 312 of the Texas Tax Code, in Sections 312.204(d) and 312.402(d) provides that no member of the governing body of the municipality or the planning or zoning board or commission or member of the commissioners court may own or lease the property on which tax abatement is sought. While the applicable provisions, quoted above, make no direct reference to members of the governing bodies of other taxing units eligible to grant tax abatement owning or leasing interest in the property on which tax abatement is sought, the Texas Legislature makes its intention clear. The Legislature did not intend for a member of any governing body,

eligible to grant tax abatement, to grant tax abatement to himself or herself.

If any board member of the Navigation District owns any interest in Moss Bluff, such property is excluded from receiving tax abatement by the Navigation District. To phrase the answer in more direct terms, the Navigation District can not enter into a tax abatement agreement with Moss Bluff on any property if the board member owns an interest, however small, in the property.

Item "C" is merely a request for direction under applicable law.