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**MICHAEL P. FLEMING**

County Attorney  
Harris County, Texas

Opinion Committee

September 11, 1997

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

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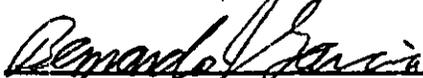
Re: Whether the board of directors of an appraisal district can contract with the board of directors of another appraisal district to provide for a single appraisal review board hearing for property located an area common to both districts?  
C.A. No. 64,035

To the Attorney General:

On behalf of the Harris County Attorney's Office, I respectfully request your opinion as to whether the board of directors for the Harris County Appraisal District can contract with the board of directors of an overlapping appraisal district in accordance with the Interlocal Cooperation Act, TEX GOV. CODE § 791. The contract contemplated would provide that a single appraisal review board determine property owner protests for property located in areas common to both districts. Please provide us with an opinion concerning this matter as soon as possible due to enacted legislation, effective January 1, 1998. See Act of June 20, 1997, S.B. 670, 75<sup>th</sup> Leg. (Amending TEX. TAX CODE. § 6.025 to require appraisal districts to coordinate appraisal activities so as to appraise property at the same value effective January 1, 1998).

Very truly yours,

**MICHAEL P. FLEMING**  
**HARRIS COUNTY ATTORNEY**

  
Bernardo J. Garcia, Assistant County Attorney

C:

Jim Robinson  
Chief Appraiser  
Harris County Appraisal District

Rosalinda Garcia  
Bureau Chief  
Harris County Attorney's Office

John Strausser  
Chairman  
Harris County Appraisal Review Board

## Memorandum Brief

**Question:** Whether the board of directors of an appraisal district can contract with the board of directors of another appraisal district to provide for a single appraisal review board hearing for property located an area common to both districts?

The Harris County Appraisal District (HCAD) is an appraisal district created by the legislature pursuant to Texas Tax Code §6.01.<sup>1</sup> The district is charged with the responsibility 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.<sup>2</sup> Although the territorial boundaries of an appraisal district generally coincide with the boundaries of the county for which it is created, the district's boundaries may sometimes extend beyond the county boundaries.<sup>3</sup> The code further establishes that each district is a political subdivision of the state.<sup>4</sup> The Interlocal Cooperation Act provides that a local government, including a political subdivision,<sup>5</sup> may contract or agree with another local government to perform governmental functions.<sup>6</sup> Therefore, it appears that the Harris County Appraisal District can enter into an interlocal contract as provided for under the act.

This request concerns protests related to the appraisal of property in territory that is common to two or more appraisal districts, commonly referred to as "overlapping" property. Changes made to §6.025 of the Texas Tax Code effective January 1, 1998, require that the chief appraisers of appraisal districts coordinate their appraisal activities so as to facilitate the appraisal of property appraised by each district at the same value.<sup>7</sup> The amended statute

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<sup>1</sup> TEX. TAX CODE § 6.01(a)-(c).

<sup>2</sup> *Id.*

<sup>3</sup> See TEX. TAX CODE § 6.02 (establishing district boundaries).

<sup>4</sup> TEX. TAX CODE § 6.01(c).

<sup>5</sup> § 791.00 (4) (defining a local government to include a "political subdivision).

<sup>6</sup> TEX. GOV'T CODE § 791.011(a).

<sup>7</sup> Act of June 20, 1997, H.B. 670, 75<sup>th</sup> Leg., R.S. (Texas 1997). Previously subsection 6.025 (c) only required the chief appraisers to coordinate to "...the extent practicable".

<sup>7</sup> *Id.*

provides that if on May 1 of a tax year, the chief appraisers of the districts are not in agreement as to the appraised value of a parcel or item of property located in both appraisal districts, the value entered for both districts will be the average between their values.<sup>8</sup> The property owner will be entitled to protest this value with the appraisal review board of any appraisal district in which the property is located.<sup>9</sup> The determination of the appraisal review board is binding on all appraisal districts.

To avoid the possibility of multiple conflicting appraisal review board determinations, local appraisal districts are considering entering into contracts to provide for a single hearing conducted by the board established for the county in which the property is located. Under this proposal, a property owner whose property is located in an overlapping area may file a protest with the appraisal review board for any appraisal district in which the property is located. But with an interlocal contract that board would automatically refer the protest to the appraisal review board for the county in which the property is located for a final determination. After the home county appraisal review board determines the protest, the board that received the protest and any other appraisal district would enter the final determination of the protest in its records. Similar procedures would apply if the home county's appraisal review board determination were appealed to the district court. Consequently, if authorized to do so, we ask whether the boards of directors of overlapping districts desiring to provide for such procedures can contract under the Interlocal Cooperation Act<sup>10</sup>.

To elaborate as to why the ability for an appraisal district to enter into this contract is so important, the joint responsibility of overlapping districts needs to be discussed. An appraisal district derives its powers at large from the constitution and specifically from the

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (emphasis added).

statutes governing the particular duties it is to discharge as stated in the code.<sup>11</sup> One of these responsibilities involves the appraisal of properties in areas that may overlap boundaries of other appraisal districts.<sup>12</sup> When this occurs, the chief appraisers of each respective district, under current law, must enter into a written understanding concerning the coordination of appraisal functions and the exchange of mutually relevant information.<sup>13</sup> In essence, each district, being individually responsible to appraise the subject property, must work together to promote uniformity in the appraisal process. House Bill 670 extends this policy by making a single appraised value for the property mandatory. Based on this same policy, the Harris County Appraisal District Board of directors (HCAD Board) intends to enter into an agreement wherein property located in HCAD's territorial boundaries but beyond the county line would be reviewed by the adjacent county's appraisal review board. This would occur regardless of where the protest originated. The HCAD appraisal review board would reciprocate by hearing protests for those properties located in Harris county that are subject to review by itself and the overlapping review board.<sup>14</sup>

The need for such a contract is compelling under the new law. HCAD and its seven surrounding appraisal districts share in excess of 100,000 properties that fall in two or more district boundaries. To ensure that the appraisals meet the mandates of House Bill 670, the appraisal districts want to contract so that the home county appraisal district will provide appraisal records to each overlapping appraisal district. If the districts can also contract to ensure that protest hearings related to the property are heard by the board for the district that created the records, they can ensure that records and staff needed to support the values in

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<sup>10</sup> See TEX. GOV'T. CODE § 791.

<sup>11</sup> See Op. Tex. Att'y Gen. No. JM-72 (1983) at 2 ("an appraisal district can exercise only those powers and duties which are clearly set forth in the constitution and statutes of this state").

<sup>12</sup> See TEX TAX CODE § 6.02 (a)(b); 6.025 (a) (establishing overlapping boundaries).

<sup>13</sup> TEX TAX CODE § 6.025 (a).

hearings are present. Otherwise, it will be very difficult to meet the districts' collective burden of proof in hearings if overlapping as well as the home county appraisal review board receives protests and schedules hearings related to the property. Additionally, House Bill 670 does not appear to contemplate the possibility that a second or third appraisal review board might also receive a protest and order a conflicting change to a property's value. To avoid possible forum shopping problems, the districts want to address the issue by contract.

The appraisal districts are authorized to contract with one another under the Interlocal Cooperation Act for appraisal services.<sup>15</sup> At issue is whether such a contract can address the consolidation of governmental services rendered by the appraisal review board. While the board is part of the appraisal district and funded under its budget,<sup>16</sup> it exercises different official duties than those exercised by the chief appraiser or by the board of directors.

The appraisal review board's basic functions and duties are generally described in Texas Tax Code §41.01. These functions include hearing protests, approving appraisal records, and taking any action or making "any other determination that this title specifically authorizes or requires."<sup>17</sup> While these responsibilities may be characterized as quasi-judicial, with the exception of approval of appraisal records, which is not at issue here, they are not substantially different from discretionary actions that any governmental official might take with respect to the determination of facts within that official's jurisdiction. The chief appraiser exercises exactly the same authority under current law with respect to appraisal determinations that are not protested. For these reasons, the services provided by the appraisal review board are within the scope of governmental services that may be addressed

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<sup>14</sup> Of course, such a contractual agreement would be clearly expressed to prevent any ambiguity that might exist. See also Tex. Att'y Gen. LA- 41 (1997) (stating that an interlocal agreement could exist between an appraisal district and a taxing unit provided sufficient specificity distinguished the contractual relationship).

<sup>15</sup> TEX TAX CODE § 6.05 (b).

<sup>16</sup> See TEX TAX CODE § 6.06 (a) (establishing the district budget) and § 6.42 (c) (stating that board members are entitled to a per diem set by the appraisal districts budget).

<sup>17</sup> TEX TAX CODE § 41.01 (1)-(6).

in an interlocal contract. Given that a contract may be entered into, it is now asked whether the appraisal review board must itself approve or be a signatory to such a contract.

Each appraisal district contains one, and only one, appraisal review board, although two or more boards will have concurrent jurisdiction over property in overlapping territory.<sup>18</sup> For most purposes, the code appears to treat the appraisal review board as the "judicial branch" of the entire appraisal district. The code does not declare the board to be a political subdivision of the state or a separate municipal corporation. Neither does it expressly state that the appraisal district board of directors "governs" the appraisal review board. However, the appraisal district's board of directors does retain the authority to: 1) appoint the review board members, 2) increase the number of board members, 3) determine the term length of a member, and 4) to remove review board members under certain circumstances.<sup>19</sup> However, some case law suggests that review boards should be treated as separate political subdivisions.<sup>20</sup>

In *Dallas County Appraisal District and Dallas County Appraisal Review Board v. Institute for Aerobics Research*, 751 S.W.2d 860 (Tex. 1988), the Texas Supreme Court held that the Dallas County Appraisal Review Board held the "same legal status as the appraisal district for purposes of filing an appeal bond."<sup>21</sup> This is the only indication found that suggests that the board might have separate legal status from the appraisal district. On the other hand, the attorney general has previously indicated, with respect to contracts for consolidation of county collections that the county commissioners' court may not entirely

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<sup>18</sup> *Id.*

<sup>19</sup> TEX. TAX CODE § 6.41 (b)(d)(f).

<sup>20</sup> See *Dallas County Appraisal District and Dallas County Appraisal Review Board v. Institute for Aerobics Research*, 751 S.W.2d 860 (Tex. 1988).

<sup>21</sup> *Id.*

contract away the authority of the county assessor collector.<sup>22</sup> Based upon that rationale, the appraisal review boards involved would necessarily need to approve such a contract, once it has been executed by the appraisal district boards of directors; less its constitutional authority be intruded upon. However, the review board's authority is not diminished since members of an appraisal review board hear the protests. Its duties are not improperly delegated to third parties.

In summary then, the Interlocal Cooperation Act provides that the governing body of each party to the contract must authorize an agreement. The appraisal district's board of directors may contract on behalf of the appraisal review board. The services provided by the appraisal review board are governmental functions and services and concern matters in which the districts are mutually interested.

For the reasons discussed above, the board of directors of overlapping appraisal district may contract with each under the Interlocal Cooperation Act to have one appraisal review board review determine protests on property located in the overlapping area.

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<sup>22</sup> See Op. Tex. Att'y Gen. No. JM-1025 (1989) ("The commissioners court may not take action which in effect abolishes the constitutional office of the county tax assessor-collector. ... Nor may the commissioners' court replace the county tax assessor-collector by contracting with a private firm." (citations omitted)).

Bill Number: TX75RHB 670  
ENROLLED

Date: 5/30/97

AN ACT

relating to the appraisal of property for ad valorem tax purposes.  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 6.025, Tax Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) The chief appraisers of appraisal districts described by Subsection (a) shall ~~to the extent practicable~~ coordinate their appraisal activities so as to ~~encourage and~~ facilitate the appraisal of the same property appraised by each district at the same value.

(d) If a chief appraiser approves an application for a residence homestead exemption under Section 11.13 or an application under that section for a residence homestead exemption for an individual who is disabled or 65 years of age or older, the chief appraiser of every other appraisal district in which the property is located shall recognize that exemption and enter the exemption on the appraisal rolls of the appraisal district.

(e) If on May 1 all the chief appraisers of the appraisal districts described by Subsection (a) in which a parcel or item of property is located are not in agreement as to the appraised value of the property, on that date each of the chief appraisers shall enter as the value of the property on the appraisal records of the appropriate appraisal district the value that is calculated by:

(1) adding the appraised value of the property as determined by each chief appraiser; and

(2) dividing the sum of those appraised values by the number of appraisal districts in which the property is located.

(f) The owner of property for which the appraised value is determined under Subsection (e) is entitled to file a protest in relation to the property with the appraisal review board of any appraisal district in which the property is located. If the appraisal review board or a court on appeal of the protest determines a different appraised value for the property pursuant to the protest or appeal, the chief appraiser of every appraisal district in which the property is located shall enter that appraised value of the property on the appraisal records of the appraisal district.

SECTION 2. This Act takes effect January 1, 1998, and applies only to a tax year that begins on or after that date.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 670 was passed by the House on March 26, 1997, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 670 on May 28, 1997, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 670 was passed by the Senate, with amendments, on May 23, 1997, by a viva-voce vote.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor



Harris County Appraisal District  
2800 North Loop West  
P. O. Box 920975  
Houston, TX 77292-0975

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