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The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

OPINION COMMITTEE

RQ-0707-GA

Dear General Abbott:

As chair of the Senate Transportation and Homeland Security Committee, I ask for your opinion regarding the apparent conflict between Section 2(b), Article VIII, Texas Constitution, and Section 11.22(a), Tax Code, with respect to the amount of the exemption from ad valorem taxation to which certain disabled veterans are entitled.

Section 2(b), Article VIII, Texas Constitution, authorizes the legislature to exempt property of a disabled veteran from ad valorem taxation. The amount of the exemption may be up to a specified dollar amount based on the veteran's disability rating. Disabled veterans are classified into categories according to ranges of disability ratings, with exemptions in greater amounts authorized for veterans with greater disability ratings. The legislature provided for the exemptions authorized by the constitution by enacting Section 11.22, Tax Code. Before the 2007 constitutional amendment to Section 2(b), the disability rating categories set out in Section 11.22(a) corresponded exactly to the categories set out in the constitution, and the exemption amounts set out in Section 11.22(a) were the maximum amounts authorized by the constitution.

On November 6, 2007, the voters approved the constitutional amendment proposed by S.J.R. No. 29, 80th Legislature, Regular Session, 2007, which amended Section 2(b), Article VIII, Texas Constitution, to change the schedule of disability ratings used to determine the amounts of the exemptions to which disabled veterans may be entitled. Legislative history indicates that the shift in the schedule was intended to mitigate the effect on the amount of the exemption to which a disabled veteran is entitled when the United States Department of Veterans Affairs rounds the percentage of a veteran's disability down to the nearest 10 percent to determine the veteran's official disability rating.¹ However, enabling legislation amending the corresponding schedule

¹ S.J.R. No. 29 was amended on the floor of the house of representatives on May 22, 2007, to add the text of H.J.R. No. 37. See the discussion of the purpose of H.J.R. No. 37 in the analysis prepared by the House Research Organization dated May 7, 2007.

of disability ratings listed in Section 11.22(a), Tax Code, was not enacted, thereby creating an apparent conflict between the constitution and the Tax Code.²

For example, Section 2(b) of Article VIII formerly authorized the legislature to provide for an exemption of up to \$10,000 for a veteran having a disability rating of "more than" 50 percent but "not more than" 70 percent and for an exemption of up to \$12,000 for a veteran having a disability rating of "more than" 70 percent. Section 11.22 provides for exemptions in amounts equal to those stated maximum exemption amounts for veterans having disability ratings in those categories. However, because the United States Department of Veterans Affairs sets disability ratings by rounding the initial calculated disability ratings down to the nearest 10 percent, a veteran with a calculated disability of 74 percent would have an official disability rating rounded down to 70 percent and thus would receive an exemption of only \$10,000, not the \$12,000 exemption the veteran would have received had the department not rounded the veteran's disability rating down. The 2007 constitutional amendment proposed by S.J.R. No. 29 amended Section 2(b) of Article VIII to authorize the legislature to provide for an exemption of up to \$10,000 for a veteran having a disability rating of "not less than" 50 percent but "less than" 70 percent "or more." In brief, the amendment moved each veteran whose disability rating is 10, 30, 50, or 70 percent up one category so that any veteran whose disability rating was rounded down remains in the category he or she would have been in without the rounding. Had the legislature made a corresponding amendment to the disability rating categories in Section 11.22(a), Tax Code, a disabled veteran whose disability percentage was rounded down from 74 percent to an official rating of 70 percent would have been entitled to an exemption of \$12,000, which is the same exemption to which the veteran would have been entitled had the department not rounded the veteran's calculated disability percentage down. However, because the 80th Legislature did not amend the disability rating categories in Section 11.22(a) to correspond to the categories in Section 2(b) of Article VIII, it is not clear whether the amount of the exemption to which such a veteran is entitled is \$10,000 or \$12,000.

It could be argued that such a veteran is entitled to an exemption of \$10,000 as literally provided by Section 11.22(a), even though the legislature could have increased the amount of the exemption for that veteran to \$12,000. On the other hand, it could be argued that such a veteran is entitled to an exemption of \$12,000 because that was the legislature's and the voters' intent in adopting the constitutional amendment proposed by S.J.R. No. 29. Disabled veterans and appraisal districts have expressed confusion as to the amount of the exemptions to which disabled veterans are entitled in light of the literal conflict between Section 2(b) of Article VIII and Section 11.22(a).

In enacting Section 11.22(a), Tax Code, the legislature at the time of enactment intended to provide disabled veterans with the benefits of the exemption authorized by Section 2(b), Article VIII, Texas Constitution, in the maximum amounts permitted by Section 2(b). Failing to give

² H.B. No. 358, Acts of the 80th Legislature, Regular Session, 2007, which would have amended Section 11.22(a), Tax Code, to reflect the amended schedule in the constitution, was not passed out of the Senate Finance Committee.

effect to the exemptions in the full amounts provided by the constitution because the disability rating categories in Section 11.22(a) do not conform to the disability rating categories in Section 2(b) of Article VIII would arguably nullify the legislature's original purpose in enacting Section 11.22. Strictly applying Section 11.22(a) to determine the amount of the exemption to which a disabled veteran is entitled would arguably defeat the intent of the legislature and the voters in approving S.J.R. No. 29, which was intended to prevent disabled veterans from having their exemptions reduced by being shifted to lower disability rating categories as a result of the rounding down of disability ratings by the United States Department of Veterans Affairs.

Section 2(d), Article VIII, Texas Constitution, may be relevant to the resolution of the conflict between Section 2(b) of Article VIII and Section 11.22(a), Tax Code. Section 2(d) provides that "[u]nless otherwise provided by general law enacted after January 1, 1995, the amounts of the exemptions from ad valorem taxation to which a person is entitled under Section 11.22, Tax Code, . . . are the maximum amounts permitted under Subsection (b) of this section instead of the amounts specified by Section 11.22, Tax Code." Under Section 2(d) of Article VIII, a disabled veteran who is entitled to an exemption under Section 11.22 may be entitled to the exemption in the maximum amount permitted by Section 2(b) of Article VIII regardless of whether that is the exemption amount specified by Section 11.22. Section 2(d) of Article VIII was added by the constitutional amendment proposed by H.J.R. No. 68, 74th Legislature, Regular Session, 1995, and approved by the voters at the November 1995 election. The 1995 constitutional amendment also amended Section 2(b) of Article VIII to increase the maximum amount of the exemption authorized for each disability rating category. Section 2(d) was added to ensure that disabled veterans received exemptions in the maximum amounts authorized by the constitution in the event the legislature failed to amend Section 11.22 in that session to increase the exemption amounts to conform to the maximum amounts authorized by the constitution. In fact, enabling legislation to so amend Section 11.22 in 1995 failed to pass. Section 11.22 was eventually amended in 2001 to specify exemption amounts that correspond to the maximum amounts authorized by the constitution. It is not clear whether the enactment of the 2001 legislation or the 2007 constitutional amendment to Section 2(b) affect the application of Section 2(d).

Although Section 2(d) of Article VIII was directed specifically at the amount of the exemption to which a disabled veteran is entitled rather than the disability rating category that corresponds to each exemption amount, that provision could be construed to apply in the current circumstances to provide that a disabled veteran is entitled to an exemption under Section 2(b) of Article VIII in the maximum amount authorized by that section regardless of whether that is the amount of the exemption to which the disabled veteran would be entitled under a literal reading of Section 11.22. Section 2(d) expressly provides that it may be repealed by general law. When the legislature amended Section 11.22, Tax Code, in 2001, it elected not to repeal Section 2(d) of Article VIII. By leaving Section 2(d) in the constitution, the legislature arguably anticipated circumstances like those currently resulting from the failure of the legislature to amend Section 11.22 in 2007 to conform to the 2007 constitutional amendment.

The changes made to Section 2(b), Article VIII, Texas Constitution, by the 2007 constitutional amendment proposed by S.J.R. No. 29 authorize exemptions in a greater amount for certain disabled veterans. Rather than applying Section 11.22(a), Tax Code, without regard to the

The Honorable Greg Abbott

April 16, 2008

Page 4

changes in the disability rating categories made by the 2007 constitutional amendment, it appears reasonable to resolve the conflict by incorporating the amendments made to the constitution into the schedule set out in Section 11.22(a). Texas courts have recognized that words may be read into a statute to give effect to clear legislative intent.³ Interpreting Section 11.22(a), Tax Code, in that manner would give effect to the clear intent of the legislature to entitle disabled veterans to exemptions in the maximum amount authorized by Section 2(b), Article VIII, Texas Constitution.

In light of the above facts and statutory provisions, I ask that you answer the following question:

In applying Section 11.22(a), Tax Code, should an appraisal district resolve the conflict between that section and Section 2(b), Article VIII, Texas Constitution, by using the schedule of disability ratings and corresponding maximum exemption amounts listed in the constitution instead of the schedule listed in the Tax Code?

Thank you in advance for your consideration of this matter. If you need further information or clarification regarding this request, please contact me or my general counsel, Barbara Salyers.

Sincerely,



John Carona

State Senator

Chair Senate Transportation and Homeland Security Committee

³ See *Sweeney Hospital District v. Carr*, 378 S.W.2d 40, 47 (Tex. 1964).