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OPINION COMMITTEE

RYAN GUILLEN
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TEXAS STATE REPRESENTATIVE

FILE # ML-47348-13
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RQ-1143-GA

August 2, 2013

The Honorable Greg Abbott
Texas Attorney General
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

RE: Request for Attorney General Opinion regarding whether a County Appraisal District may Lawfully Establish a Capital Improvement Fund and would be Justified in Holding Excess Funds from the Previous Fiscal Year in Said Account, whether a County Appraisal District may take Excess Funds and Pay Appraisal District Employees a One-time "Lump Sum Merit Pay" Payment out of those Excess Funds, whether a County Appraisal District may take Funds that it Acquires that do not come from the Taxing Units and Spend those Funds as it Chooses, and whether the Taxing Units Involved have any Remedy Provided by Law if they are not in Favor of said Budget Amendments

Dear Attorney General Abbott:

Pursuant to Tex. Gov't Code §402.043, I respectfully request that you provide this office with a formal written opinion regarding the following questions.

1. What qualifies as payments that are *obligated* to be spent in the following section of Texas Tax Code Section 6.06(j): "the total amount of payments made or due to be made by the taxing units participating in an appraisal district exceeds the amount actually spent or obligated to be spent during the fiscal year for which the payments were made"?
 - a. If a County Appraisal District Board of Directors votes to spend funds that it knows have not been spent and are not going to be spent during the fiscal year for a "one-time lump sum merit pay" for its employees, has the Board "obligated" those funds for purposes of Texas Tax Code Section 6.06(j), or is the Chief Appraiser required to credit that amount proportionately back to its taxing units?

- b. If a County Appraisal District Board of Directors votes to place funds that it knows have not been spent and are not going to be spent during the fiscal year into a "Capital Improvement Fund", has the Board "obligated" those funds for purposes of Texas Tax Code Section 6.06(j), or is the Chief Appraiser required to credit that amount proportionately back to its taxing units?
 - c. Do funds that have been acquired by the Appraisal District from sources outside its taxing units qualify as excess funds for which the taxing units must be credited under Section 6.06(j)?
2. May a County Appraisal District's "Capital Improvement Fund" be budgeted for the fiscal year 2014 and onwards if excess funds are being automatically appropriated into said account and/or if the proposed amount for the "Capital Improvement Fund" was not prepared in the proposed budget by the June 15 deadline?
 3. If a County Appraisal District Board of Directors votes to give its employees an across-the-board "one-time lump sum merit payment" that was not part of the Appraisal District's employee compensation policy in place at the time of such vote, and states that such payment is not for services already rendered but is instead a payment of salary for future services at a temporary rate, does that violate Article III, section 53 of the Texas Constitution?
 4. Are taxing units able to disapprove budget amendments approved by a County Appraisal District Board of Directors under Texas Tax Code Section 6.10 and if not are there any additional measures provided by law to the taxing units?

Please see the attached brief addressing the above referenced issues. I respectfully request wavier of the §402.042(c) requirement regarding submission of request via certified mail. Thank you for your time and consideration.

Sincerely,



Ryan Guillen
Texas State Representative



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TEXAS STATE REPRESENTATIVE

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The Appraisal District is a government entity established by state law and is defined in Texas Tax Code Section 6.01(a) and Section 6.01(b). The body to which it is held accountable is comprised of each of the taxing units participating in the district. Additionally, as stated in Section 6.03(a), the Appraisal District is governed by a Board of Directors which consists of persons chosen by each of the taxing units participating in the district.

Tax Code Section 6.06(j) states: "(i)f the total amount of payments made or due to be made by the taxing units participating in an appraisal district exceeds the amount actually spent or obligated to be spent during the fiscal year for which the payments were made, the chief appraiser shall credit the excess amount against each taxing unit's allocated payments for the following year in proportion to the amount of each unit's budget allocation for the fiscal year for which the payments were made." Although the definition of "actually spent" does not appear to be open for dispute, there is no statutory definition of "obligated to be spent." A common-sense definition of "obligated to be spent" would be "the money that has been budgeted that *will* have

to be spent before the end of the fiscal year to continue operating, such as the funds budgeted to pay the Appraisal District's office electric bill, telephone bill, salaries of currently employed individuals, and the like." Obviously some of those budget items cannot be determined ahead of time down to the last penny, and at the conclusion of the fiscal year, there could be a few dollars left unspent in some of those budget items. At the time that an Appraisal District is drafting its

proposed budget for the *next* fiscal year, an Appraisal District could not be expected to "credit" these funds to the taxing units because although those funds have not actually been spent, they have been *obligated* to be spent, and an Appraisal District would not know whether there would be some of those funds that remain unspent until the actual end of the fiscal year when all that year's operating expenses have been paid. The Appraisal District *would* know whether there were any funds that were not actually spent in the *previous* year's budget, however, and could credit those funds to the taxing units in the budget for the *next* fiscal year when it is working on its budget for the next fiscal year. An Appraisal District could also credit any unspent amounts after the previous fiscal year is concluded to any payment by a taxing unit made during the current year for that year's expenses. There are also some budget situations in which an Appraisal District would already *know* that the budgeted funds are not going to be spent before the end of the fiscal year at the time that the Appraisal District is working on its next year's fiscal budget. For example, there could be an employee of the Appraisal District that quits his or her job, and the Appraisal District does not fill that job for a number of months. The unpaid salary for that employee during the time period that the job remains unfilled would not have been spent on that employee's salary, nor would those funds be *obligated* to be spent because there would be no employee for those months to whom the salary would be owed. What if during the fiscal year a County Appraisal District Board of Directors voted to "obligate" the unexpended funds for this salary to provide a one-time across-the-board "lump sum merit payment" for the Appraisal District employees? Would voting to spend the funds in this manner "obligate" those funds thus taking them out of the category of "excess funds" to be credited back to the taxing units? There is also the possibility that a County Appraisal District could be paid for work done under a contract with another County Appraisal District during the fiscal year and that the receipt of those funds would not have been included as part of that year's budget. *See Tex. Atty. Gen. Op. No. LO 94-067(1994)*. What if the Appraisal District printed and sold county maps over the course of the fiscal year? Would the money collected for the sale of those maps qualify as money that would not be *obligated* to be spent and have to be credited back to the taxing units? No matter the source of the "excess funds," if a County Appraisal District Board of Directors failed to indicate that these excess funds were credited back to the taxing units participating in the district in the upcoming fiscal year's budget and instead created a special fund using those funds, then it appears that the County Appraisal District would be in violation of the Sec. 6.06(j) of the Texas Tax Code. For instance, a County Appraisal District Board of Directors' action to move such funds into an account called the "Capital Improvement Fund" instead of crediting them to the taxing units participating in the district would appear to be unlawful. *See "Capital Improvement Fund"(Section G) in Exhibit A.*

Texas Tax Code Section 6.06(a) states that the Chief Appraiser shall prepare a proposed budget for the Appraisal District's operations for the following tax year; the Chief Appraiser is to do so before June 15. Under that section, the Chief Appraiser is directed to include in this proposed budget a list showing each proposed position, the proposed salary for the position, all benefits proposed for the position, each proposed capital expenditure, and an estimate of the

amount of the budget that will be allocated to each taxing unit. *See Section 6.06(a)*. In this instance, if the Chief Appraiser were to inadequately prepare the proposed budget for the following tax year, he or she would be in direct violation of Section 6.06(a). It would be also be a violation of Section 6.06(a) if the "Capital Improvement Fund," which may be classified as a capital expenditure, was listed as a budget item with an undisclosed amount. *See Sec. 7. in Exhibit A*. Having improperly and incompletely prepared the capital expenditures on the proposed budget, the Board of Directors of the County Appraisal District would seem to be in direct violation of Section 6.06(a) not only once but twice.

The Texas Constitution Article III, Section 53 states that a county or municipal authority, which includes a county appraisal district, may not receive extra compensation after services have been rendered. The facts outlined in *Tex. Atty. Gen. Op. No. LO 94-067(1994)* also indicate a second issue involving a county appraisal district's board of directors' decision to use excess funds to make a "one-time lump sum merit payment" to appraisal district employees. Stephens County Appraisal District Board of Directors labeled the payments to its employees "bonuses." *See Tex. Atty. Gen. Op. No. LO 94-067 (1994)*. What if the Board of Directors does not approve such a one-time payment as part of the employees' compensation before the employees rendered their services, but instead votes to approve such a payment to the employees and labels it a "lump sum merit payment," saying that it is not for services already rendered but is instead a payment of salary for future services at a temporary rate? Would that be permitted under Article III, section 53? In *Tex. Atty. Gen. Op. No. GA-0368 (2005)*, the question was whether a civil service commission may authorize retroactive salary increases for municipal employees, and while the Attorney General stated that Article III, section 53 of the Texas Constitution prohibited the Socorro Civil Service Commission from granting a pay increase to municipal employees effective from the date of their last evaluation unless a policy for such pay increase was already in existence prior to the evaluation, that opinion also stated that the Socorro Civil Service Commission "may recommend pay raises for meritorious employees to be applied prospectively." *See Op. No. GA-0368 at p. 2*.

The final question involves the taxing units' role in the County Appraisal District budget process. Texas Tax Code Section 6.06(b) sets out the initial budget process in which the County Appraisal District Board of Directors approves a final budget by September 15 each year. As part of that process, each taxing unit has thirty days from the date that the Board of Directors adopts that budget to pass a resolution disapproving that budget and file it with the secretary of the Board of Directors. If a majority of the taxing units pass and file such resolutions, the Board of Directors has to adopt a new budget. Section 6.06(c) then states that the Board of Directors "may amend the approved budget at any time, but the secretary of the board must deliver a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit participating in the district not later than the 30th day before the date the board acts on it." Section 6.06 does not describe any specific process for the taxing units to approve or disapprove budget amendments, although the fact that the secretary of the Board of Directors must deliver any proposed budget amendments to the taxing units thirty days prior to the Board voting on those amendments implies that the taxing units need time to review these proposed budget amendments for some purpose. Although budget amendments are not specifically mentioned in this provision, it appears that the taxing units would be able to disapprove budget amendments under Texas Tax Code Section 6.10 which is the general provision allowing the taxing units to adopt resolutions disapproving board actions. That provision states that if a majority of the

taxing units adopt and file resolutions disapproving a board action, other than adoption of the budget, within fifteen days after the action is taken the action is revoked effective the day after the day on which the required number of resolutions is filed. It would appear that voting to approve a budget amendment does not fall within the exception of "adopting the budget," and therefore any budget amendment approved by the board could be disapproved by the taxing units under this section.

While a County Appraisal District may or may not be justified in its establishment of a capital expenditure labeled "Capital Improvement Fund," it would seem that the County Appraisal District would be unjustified in moving surplus funds into said account. Underlying that issue is the issue of defining excess funds for the purposes of Texas Tax Code Section 6.06(j). There is also a further issue when such surplus funds have been used to pay Appraisal District employees a "one-time lump sum merit pay" payment as to whether that is prohibited under Article III section 53 of the Constitution. There is also some question as to whether the taxing units may use Tax Code Section 6.10 to disapprove budget amendments adopted by the Board of Directors of the County Appraisal District. In light of the facts, and authority presented, it is respectfully requested that the Attorney General resolve the following questions:

1. What qualifies as payments that are *obligated* to be spent in the following section of Texas Tax Code Section 6.06(j): "the total amount of payments made or due to be made by the taxing units participating in an appraisal district exceeds the amount actually spent or obligated to be spent during the fiscal year for which the payments were made"?
 - a. If the County Appraisal District Board of Directors votes to spend funds that it knows have not been spent and are not going to be spent during the fiscal year for a "one-time lump sum merit pay" for its employees, has the Board "obligated" those funds for purposes of Texas Tax Code Section 6.06(j), or is the Chief Appraiser required to credit that amount proportionately back to its taxing units?
 - b. If the County Appraisal District Board of Directors votes to place funds that it knows have not been spent and are not going to be spent during the fiscal year into a "Capital Improvement Fund", has the Board "obligated" those funds for purposes of Texas Tax Code Section 6.06(j), or is the Chief Appraiser required to credit that amount proportionately back to its taxing units?
 - c. Do funds that have been acquired by the Appraisal District from sources outside its taxing units qualify as excess funds for which the taxing units must be credited under Section 6.06(j)?
2. May a County Appraisal District's "Capital Improvement Fund" be budgeted for the fiscal year 2014 and onwards if excess funds are being automatically appropriated into said account and/or if the proposed amount for the "Capital Improvement Fund" was not prepared in the proposed budget by the June 15 deadline?
3. If the Board of Directors of the County Appraisal District votes to give its employees an across-the-board "one-time lump sum merit pay" payment that was not part of the Appraisal District's employee compensation policy in place at the time of such vote, and states that such payment is not for services already

rendered but is instead a payment of salary for future services at a temporary rate, does that violate Article III, section 53 of the Texas Constitution?

4. Are taxing units able to disapprove budget amendments approved by a County Appraisal District Board of Directors under Texas Tax Code Section 6.10 and if not are there any additional measures provided by law to the taxing units?