



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 18, 1998

The Honorable Michael P. Fleming
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 98-022

Re: Whether the Board of Directors of the Harris County Appraisal District may contract with the board of directors of an overlapping appraisal district to designate a single appraisal review board to hear taxpayer protests about the appraisal of property located in areas common to both districts (RQ-994)

Dear Mr. Fleming:

You ask whether the Board of Directors of the Harris County Appraisal District may contract with the board of directors of an overlapping appraisal district to designate a single appraisal review board to determine property owner protests for property located in territory common to both districts. The Harris County Appraisal District (the HCAD), created pursuant to section 6.01 of the Tax Code, is responsible for appraising property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.¹ An appraisal district's boundaries are usually the same as the county's boundaries, but a taxing unit with boundaries extending into two or more counties may choose to participate in only one of the appraisal districts.² In that case, the boundaries of the district chosen by the taxing unit extend outside the county to the extent of the unit's boundaries.³ The properties within the extension of the boundaries, referred to as "overlapping" properties, are subject to appraisal by two or more appraisal districts. The appraisal district chosen by the taxing unit situated in two or more counties will appraise overlapping

¹Tax Code § 6.01(b). "Taxing unit," defined by section 1.04(12) of the Tax Code, means a county, an incorporated city or town, a school district, a special district or authority, a hospital district, a district created by or pursuant to the Water Code, and various other specialized districts and political units that have authority to impose and are imposing ad valorem taxes on property.

²*Id.* § 6.02(a), (b). Article VIII, section 18 of the Texas Constitution requires the legislature to provide for "[a] single appraisal within each county of all property subject to ad valorem taxation by the county and all other taxing units located therein," and permits the legislature to authorize appraisals outside a county when political subdivisions are situated in more than one county.

³*Id.* § 6.02(b).

properties for that taxing unit, while the appraisal district established for the county in which the land is located will appraise it for all other taxing units. You state that the HCAD and its seven surrounding appraisal districts share in excess of 100,000 properties that fall within the boundaries of two or more districts.

Section 6.025 of the Tax Code, about which you inquire, expressly relates to the appraisal of overlapping property. As adopted in 1995, this provision required appraisal districts to share information on property that lies in two or more districts, but it did not require the districts to use a single valuation for property within the overlap.⁴ It was amended effective January 1, 1998,⁵ to require the chief appraisers of appraisal districts “that have boundaries that include any part of the same territory”⁶ to “coordinate their appraisal activities so as to facilitate the appraisal of the same property appraised by each district at the same value.”⁷ If all of the chief appraisers of the districts do not agree as of May 1 to the appraised value of a parcel of property within the overlap, they are to take the average of their appraised values for the property and enter it as the value of the property on the appraisal records of each district.⁸ When the value of property is determined by this method, the property owner “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.”⁹ “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.”¹⁰

You indicate that this appeal procedure will result in some administrative difficulties, and, for that reason,

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

⁴House Comm. on Ways & Means, Bill Analysis, H.B. 670, 75th Leg., R.S. (1997).

⁵Act of May 28, 1997, 75th Leg., R.S., ch. 1357, § 1, 1997 Tex. Sess. Law Serv. 5107, 5107.

⁶Tax Code § 6.025(a).

⁷*Id.* § 6.025(c).

⁸*Id.* § 6.025(e) (adopted by Act of May 28, 1997) *supra* note 5.

⁹*Id.* § 6.025(f) (adopted by Act of May 28, 1997) *supra* note 5. An appraisal review board is established for each appraisal district to hear and resolve taxpayer protests. *Id.* §§ 6.41(a), 41.47, 41.61-.71.

¹⁰*Id.*

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.

You ask whether the boards of directors of overlapping districts may contract under the Interlocal Cooperation Act, chapter 791 of the Government Code to provide for these procedures.

The members of an appraisal review board, appointed by the appraisal district board of directors,¹¹ are public officers¹² and the appraisal review board is a separate and distinct entity from the district board.¹³ The board exercises quasi-judicial powers in determining taxpayer protests.¹⁴ A property owner initiating a protest must file written notice of the protest with the appraisal review board having authority to hear the matter,¹⁵ and the board will conduct an administrative hearing to determine the accuracy of the appraisal.¹⁶

¹¹*Id.* § 6.41(d).

¹²Letter Opinion No. 97-070 (1997) at 4-5.

¹³*Corchine Partnership v. Dallas County Appraisal Dist.*, 695 S.W.2d 734, 735-36 (Tex. App.--Dallas 1985, writ ref'd n.r.e.). We realize that there is a threshold issue about the authority of the appraisal district board to enter into a contract affecting the appraisal review board, but, in view of our conclusion about the terms of the proposed contract, we do not address it.

¹⁴*Matagorda County Appraisal Dist. v. Conquest Exploration Co.*, 788 S.W.2d 687, 692, 695 (Tex. App.--Corpus Christi 1990, no writ); see *Texas State Bd. of Dental Examiners v. Fieldsmith*, 242 S.W.2d 213, 216 (Tex. Civ. App.--Dallas 1951, writ ref'd n.r.e.) (reception of evidence and investigation of facts by board involved discretion and was a quasi-judicial act).

¹⁵Tax Code § 41.44(a). In the usual case, the appraisal review board in each county reviews taxpayer protests regarding appraisals of property in the district. *Herndon Marine Products, Inc., v. San Patricio County Appraisal Review Bd.*, 695 S.W.2d 29, 32 (Tex. App.--Corpus Christi 1985, writ ref'd n.r.e.).

¹⁶Tax Code §§ 41.45, .47, .61-.71. See *Department of Housing and Urban Dev. v. Nueces County Appraisal Dist.*, 875 S.W.2d 377, 379-80 (Tex. App.--Corpus Christi 1994, no writ) (tax code provides for an administrative proceeding before an appraisal review board). The property owner may appeal the appraisal review board's decision by arbitration or by trial de novo in the district court. Tax Code §§ 42.01, .225, .23, see *Harris County Appraisal Dist. v. World Houston, Inc.*, 905 S.W.2d 594 (Tex. App.--Houston [14th Dist.] 1995, no writ).

Section 6.025(f) states that the property owner “*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.” (Emphasis added.) The filing of a protest with an appraisal review board is the starting point for an administrative proceeding before that board.¹⁷ Section 6.025(f) gives the taxpayer a right to decide which of two or more appraisal review boards with jurisdiction over the property will hear his or her protest, and we find no authority in the provisions of the Interlocal Cooperation Act or elsewhere for the board of an appraisal district to nullify the taxpayer’s decision by transferring the protest to another appraisal review board.

It is well established that a contract cannot impair the validity or force of any law, nor control or limit the provisions of a statute.¹⁸ A contract that contravenes section 6.025(f) of the Tax Code would be void and unenforceable. If a taxpayer files a protest pursuant to section 6.025 of the Tax Code, the HCAD may not contract with another appraisal district to transfer it to another appraisal review board.¹⁹ Accordingly, while we appreciate the administrative difficulties that you have mentioned, we conclude that the HCAD may not contract with the board of directors of an overlapping appraisal district to designate a single appraisal review board to hear taxpayer protests about the appraisal of property located in areas common to both districts.

¹⁷Tax Code §§ 41.44 -.47.

¹⁸*Gorman v. Gause*, 56 S.W.2d 855, 858 (Tex. Comm’n App. 1933, judgm’t adopted); *Yamaha Motor Corp. v. Motor Vehicle Div., Tex. Dep’t of Transp.*, 860 S.W.2d 223, 226 (Tex. App.--Austin 1993, writ denied), *McFarland v. Haby*, 589 S.W.2d 521, 524 (Tex. Civ. App.--Austin 1979, writ ref’d n.r.e.).

¹⁹We need not address the issues raised by the attempt to transfer discretionary duties from one appraisal review board to another. See *Krug v. Lincoln Nat’l Life Ins. Co.*, 245 F.2d 848, 853 (5th Cir. 1957); *Newsom v. Adams*, 451 S.W.2d 948 (Tex. Civ. App.--Beaumont 1970, no writ); *Moody v. Texas Water Comm’n*, 373 S.W.2d 793 (Tex. Civ. App.--Austin 1964, writ ref’d n.r.e.); Attorney General Opinions DM-14 (1991), JM-903 (1988), H-884 (1976), H-386 (1974) (discretionary duties statutorily entrusted to an officer or entity may not be subdelegated to another in the absence of express legislative authorization).

S U M M A R Y

The Board of Directors of the Harris County Appraisal District may not contract with the board of directors of an overlapping appraisal district to designate a single appraisal review board to hear taxpayer protests about the appraisal of property located in areas common to both districts. Section 6.025 of the Tax Code, which relates to the appraisal of property that lies in two or more tax appraisal districts, provides that the owner of property "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." This provision authorizes the owner of such "overlapping property" to choose which of two or more appraisal review boards with jurisdiction over the property will hear his or her protest. The Harris County Appraisal District may not enter into a contract that attempts to nullify this statute.

Yours very truly,

A handwritten signature in black ink that reads "Susan Garrison". The signature is written in a cursive style with a large initial "S" and a long, sweeping underline.

Susan Garrison
Assistant Attorney General
Opinion Committee