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2016 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

Morath v. Texas Taxpayer and Student Fairness Coalition
2016 WL 2853868 (Tex. May 13, 2016)

Issues: Schools; school finance

This is the Texas Supreme Court's new opinion on constitutional issues affecting schools and school finance. A district court in Travis County had ruled that the current system violated several constitutional provisions. The Supreme Court reversed the lower court and upheld the current system against all challenges. The Court was very differential to the legislature and very reluctant to disturb the status quo. It did not endorse or praise the current system; it ruled only that the system meets minimum constitutional requirements.

The Court found no violation of Art. VII, §1 of the Texas Constitution because there was no proof that the legislature had acted arbitrarily or unreasonably with respect to the goal of providing a general diffusion of knowledge in the state. The Constitutional requires financial efficiency, which means that school districts should have substantially equal access to similar revenues per pupil at similar levels of tax effort. Efficiency is required only up to the level of funding necessary to provide a general diffusion of knowledge. The Court reviewed the wide differences between the finances of wealthy school districts and the finances of poor school districts that caused courts to intervene in the past and concluded that the differences were not that bad today.

The Court also determined that property taxes levied by school districts were not unconstitutional state property taxes because local school districts have an adequate amount of discretion when it comes to setting their tax rates. The fact that higher tax rates may require the approval of a school district's voters does not mean that the district has no discretion.

San Patricio County v. Nueces County
2016 WL 2855127 (Tex. App. – Corpus Christi-Edinburg, May 12, 2016, no pet. hist.) (to be published)

Issues: Intergovernmental disputes over boundaries and taxing authority

For years, the boundary between San Patricio County and Nueces County was disputed. The dispute was decided in 2003 by a judgment from court in Refugio County. In 2009, however, San Patricio County sued Nueces County and the Nueces County Appraisal District claiming that they were trying to tax properties that, under the 2003 judgement, were in San Patricio County. The suit was filed in the Refugio County court, but Nueces County and the appraisal district sought to transfer venue to Nueces County. The Refugio County court granted their motion and transferred the case. The Nueces County court entered a summary judgment in favor of the defendants. San Patricio County appealed.

The court of appeals reversed the Nueces County court and ruled that the case should have stayed in Refugio County. The court cited Section 72.009 of the Local Government Code, which states that when one county sues another over a boundary dispute, the case should be filed in a neutral adjoining county. That rule also applies to claims that are related and incidental to a boundary line between the counties. Section 72.009 controls over other venue statutes that might produce a different result. Consequently, San Patricio County's suit was properly filed in neutral Refugio County and should not have been transferred. The court of appeals sent the case back to the trial court with instructions to transfer it back to Refugio County.

Johnson v. Harris County
2016 WL 2744943 (Tex. App. – Houston [1st Dist.], May 10, 2016, no pet. hist.) (not reported)

Issues: Trial record

Taxing units sued Johnson for delinquent taxes. The trial was conducted before a master, but no court reporter's record was made. When Johnson did not seek a de novo hearing, the district court entered judgment against him based on the master's recommendation. Johnson appealed.

On appeal, Johnson argued that he had not owned the property for all the years involved in the suit and that the taxes had been calculated without regard for his homestead exemption. He also argued that the taxing units had not sent required notices—some of the taxes dated back to the days when taxing units had to send delinquent tax notices every five years. The court of appeals explained that in the absence of a reporter's record, it had to presume that the evidence presented at the trial was sufficient to support the judgment against Johnson. The court affirmed that judgment.

Sebastian Cotton & Grain, Ltd. v. Willacy County Appraisal District
2016 WL 1732824 (Tex. App. – Corpus Christi – Edinburg, April 28, 2016, no pet. hist.) (to be published)

Issues: De novo review; changing owner on appraisal roll; attorney's fees on appeal

Sebastian rendered some grain for taxation, and the appraisal district appraised the grain in Sebastian's name. Then Sebastian filed a protest claiming that it did not own the grain and that the grain had been sold to DeBruce. The protest was resolved by a written agreement between Sebastian and the district with the district agreeing to transfer the grain into the name of DeBruce. DeBruce then filed a protest claiming that although it had contracted to buy the grain from Sebastian, the title had not changed as of the January 1 appraisal date—Sebastian still owned the grain. The district responded by transferring the grain back into Sebastian's name, and Sebastian filed another protest. The ARB denied the protest and upheld the district's transfer of the grain back to Sebastian. Sebastian then sued the district. In the trial court, the district argued that fraud on Sebastian's part authorized it to make the transfer. The trial court ruled for the district, and Sebastian appealed.

On appeal, Sebastian argued that because the district had not accused Sebastian of fraud in the ARB hearing, it could not do so in the trial court. The court of appeals disagreed. The higher court explained that an ARB's order is reviewed by trial de novo in a trial court. Section 42.23 of the Tax Code directs the trial court to "try all issues of fact and law raised by the pleadings." The ARB's order is not even admissible as evidence. This de novo review allows a party to make an argument and present evidence in court even if it did not make that argument or present the evidence at the ARB hearing.

The court of appeals next considered whether the district had the authority to transfer the grain back into Sebastian' name under §25.25(b), which allows a chief appraiser to change an appraisal roll at any time to correct a determination of ownership if the change does not "increase the amount of tax liability." The district argued that there was no net increase in tax liability because any increase in Sebastian's taxes was offset by a reduction in DeBruce's taxes. Sebastian argued that the district could not make a change that would increase anybody's tax liability. The court sided with Sebastian and ruled that the district did not have the authority under §25.25(b) to transfer the grain. The court further stated that a property owner such as Sebastian that prevails in an appeal of a §25.25 motion has a right to recover its attorney's fees from the appraisal district. The court sent the case back to the trial court for a determination of the amount of Sebastian's attorney's fees.

Editor's Comment: There was another approach that might have worked for the district, but the district apparently did not act in time to try it. Earlier court opinions ruled that if property is not on an appraisal roll because of fraud on the part of the property owner, an appraisal district can pick it up as omitted property. *Beck & Masten Pontiac GMC, Inc. v. Harris County Appraisal District*, 830 S.W.2d 291 (Tex. App. – Houston [14th Dist.], 1992, writ denied). Suppose the district had taken the grain off the roll when it discovered that DeBruce was not the owner. It might then have treated the grain as omitted property and added it to the roll under Sebastian's name. That would not have

raised any questions about the district's authority under §25.25(b). It appears that the district was not able to act in time to appraise the grain as omitted property for the relevant year. Omitted personal property can only be picked up during the two years following the year in which it was omitted.

Quijano v. Cameron County
2016 WL 1732439 (Tex. App. – Corpus Christi-Edinburg, April 28, 2016, no pet. hist.) (not reported)

Issues: Notice of delinquent-tax trial; evidence of delinquent taxes

In 2013 taxing units sued Quijano for 2005-2011 delinquent taxes in connection with a business he had operated. He filed a pro se answer and included documents showing that his business had ceased operations in late 2009. The trial began on September 16, 2014, but the judge continued it in order to allow time for settlement discussions. Quijano agreed to the continuance. The judge announced that the new trial date would be November 18, 2014. When that day arrived the taxing units' lawyers appeared before the judge, but Quijano did not. The lawyers offered copies of the delinquent tax records for 2005 through 2009. They no longer claimed taxes for years after Quijano's business had ceased operations. The trial court entered judgement for the taxing units, and Quijano appealed.

Quijano claimed that he had somehow been deprived of due process by the continuance of the trial, but the court of appeals explained that he had actual knowledge of the new trial date. He was not deprived of due process when he failed to appear. Quijano also claimed that the taxing units' evidence was not sufficient to support the judgment against him, but the court explained that under the Tax Code, copies of a taxing unit's delinquent tax records are evidence sufficient to support a judgment for the unit.

Wagoner v. Dallas County
2016 WL 1652291 (Tex. App. – Dallas, April 26, 2016, no pet. hist.) (not reported)

Issues: Evidence of delinquent taxes; attorneys ad litem

Wagoner and Wilson were among numerous people sued for delinquent taxes as heirs of a deceased property owner. The heirs were served by posting and an attorney ad litem was appointed to represent them. Wilson, who was incarcerated, filed an answer and sought a bench warrant so that he could appear at the trial. The trial court denied his request. Wagoner didn't file an answer but was apparently included in the attorney ad litem's answer. Neither the attorney ad litem nor any of the defendants appeared at the trial. The taxing units introduced as evidence their delinquent tax records, an affidavit of heirship and a deed. The trial court entered judgement for the taxing units in the amount of $54,000. Wilson and Wagoner appealed pro se.

The court of appeals affirmed the judgment for the taxing units. The court explained that the appellants' briefs did not raise any issues for it to consider but nevertheless made a few comments. The taxing units' evidence was sufficient to support the judgment in their favor. A criminal defendant may sometimes appeal his conviction on the grounds that his lawyer provided ineffective assistance, but that rule does not apply in civil cases. Further, Wilson had failed to provide any information to prove that his appearance at the trial was necessary. Thus, the trial court did not err when it denied his request for a bench warrant.

Haider v. Jefferson County Appraisal District
2016 WL 1468757 (Tex. App. – Beaumont, April 9, 2016, no pet. hist.) (not reported)

Issues: Situs of pooled minerals; tax payment for appeal

Manion owned a mineral interest in 400 acres of land just outside the city. She pooled 83 of her acres with other land lying inside the city, resulting in a 425 acre unit primarily in the city. The appraisal district determined that, as a result of the pooling, Manion owned minerals with taxable situs in the city. Following unsuccessful protests, Manion sued the district in 2011 and 2012. She did not pay any of the taxes assessed by the city in 2012. The trial court entered summary judgment for the district and ruled that: 1) by not paying city taxes in 2012, Manion had forfeited her right to sue for that year; 2) Manion's claims were barred by the principle of quasi-estoppel; and 3) Manion did own minerals taxable by the city. Manion appealed.

The court of appeals first noted that Manion's lease would be critical to a determination of whether she owned minerals in the city. The lease would reveal whether a cross-conveyance had occurred that would have given Manion a legal interest in minerals located in the city. Without the lease, the evidence did not support the trial court's summary judgment for the district. The court of appeals next addressed the question of quasi-estoppel and concluded that by merely accepting royalties from the pooled unit, Manion had not done anything inconsistent with her position that she did not own minerals in the city. Finally the court explained that Manion was not required to pay any 2012 taxes in order to challenge the district's appraisal because she disputed the district's claim that her property was in the city at all. The court of appeals reversed the trial court's summary judgment on all grounds and sent the case back to the lower court for further proceedings.

Texas Workforce Commission v. Harris County Appraisal District
2016 WL 1267893 (Tex. App. – Houston [14th Dist.], March 31, 2016, no pet. hist.) (to be published)

Issues: ARB members as appraisal district employees

Several former members of the ARB filed claims for unemployment benefits contending that they had been employees of the appraisal district. Following an administrative hearing, the TWC determined that the members were former district employees entitled

to benefits. The district then took the matter to the trial court, which denied the TWC's motion for summary judgment and entered summary judgment for the district. The TWC appealed.

The court of appeals reversed the judgement for the district and entered judgment for the TWC. The court of appeals explained that the relevant statute was §207.004 of the Labor Code, which defines employment as "a service performed by an individual for wages . . . unless it is shown . . . that the individual's performance of the service has been and will continue to be free from control or direction . . ." The fact that a person receives wages for his services raised a presumption of employment, but the purported employer can rebut the presumption by proving that it did not control or direct the person's work. Twenty factors are potentially relevant to the question of whether someone is an employee. The court applied the very deferential substantial-evidence standard to the TWC's decision and concluded that there was more than a scintilla of evidence to support that decision. The record showed that the district paid ARB members from its budget and withheld federal taxes from their compensation. The district selected the ARB chairman, who assigned members to panels. The district paid for the Comptroller's training provided to the members in the district's building and required members to use its timekeeping system. Members had continuing relationships with the district but could resign at any time. Members did not realize any profits or losses from their relationship with the district.

The court of appeals rejected the district's arguments based on two other laws. Section 201.063 of the Labor Code states that a "member of the judiciary" performing services for a local government is not an employee, but ARB members were administrative not judicial officers. Their positions were only quasi-judicial. Section 6.412 of the Tax Code states that appraisal-district employees may not be ARB members, but the court read that section to only preclude an ARB member from also holding some other employment with the district. The court was similarly unimpressed with other laws establishing an ARB's independence from the appraisal district and noted that the district had not proven that it was actually following those laws.

Cohen v. Midtown Management District
2016 WL 888742 (Tex. App. – Houston [1st Dist.], March 8, 2016, no pet.) (to be published)

Issues: Judgments nunc pro tunc

The management district sued Cohen for delinquent taxes on several of his properties, and the County intervened to assert its own delinquent tax claims and those of the school and college. Cohen did not appear for the trial, and the trial court entered a default judgment against him in November of 2013. In June of 2014, the taxing units moved for a judgment nunc pro tunc to correct the original judgment. The original judgment included an award of the school's taxes and the school's name appeared on one page of that judgment, but it did not appear where taxing units were listed on another page. The trial court entered a judgment tunc pro tunc, and Cohen appealed.

While the appeal was pending, the taxing units requested a second judgment nunc pro tunc to include the college's taxes, which were not included in the original judgment and to change the property values stated in the original judgment. The trial court entered the second judgment nunc pro tunc in May of 2015, and Cohen included it in his appeal.

The court of appeals explained that a trial court may use a judgment nunc pro tunc to correct clerical errors in an earlier judgment, even if the trial court would otherwise no longer have jurisdiction over the case. A judgment nunc pro tunc can correct a clerical error, but not a mistake of fact or law that requires judicial reasoning. The court of appeals approved of the first judgment nunc pro tunc. The trial court's record showed that the trial judge intended to award taxes to all taxing units, including the school. Naming the school on one page of the judgment but not on another page was a clerical error. The court of appeals, however disapproved of the second judgment nunc pro tunc. The record as a whole did not establish that the trial court had intended to award taxes to the college, even though the college was named as a plaintiff. Some language in the original judgment might have been read to dismiss the college. There was nothing in the record to show that the trial judge had intended to determine values for the properties different from the ones stated in the original judgment. Consequently, the errors corrected in the second judgment nunc pro tunc were not clerical errors, and the trial court had no authority to correct them.

HDSA Westfield Lake, LLC v. Harris County Appraisal District
2016 WL 552156 (Tex. App. –Houston [14th Dist.], February 11, 2016, no pet.) (to be published)

Issues: CHDO exemption

A community housing development organization defaulted on bonds secured by two apartment complexes exempted under §11.182 of the Tax Code. The bondholder, Fundamental Partners decided to foreclose. A complicated deal was worked out under which Fundamental Partners created a new entity called MFH to buy the complexes at the foreclosure sale and then resell them to two new CHDOs. The new CHDOs applied to the appraisal district to have the exemptions remain in place despite the change in ownership. The district denied the applications on the grounds that MFH was not a CHDO, and the ARB denied protests by the two new CHDOs. When the new CHDOs filed suit, the trial court entered a summary judgment denying the exemptions. An appeal followed.

The court of appeals reversed the trial court's summary judgment and ruled that the new CHDOs were entitled to the exemptions. The court relied on §11.182(k), which states that property may continue to receive a CHDO exemption if it is sold at a foreclosure sale and, within thirty days, the new owner provides the appraisal district with evidence that the new owner qualifies as a CHDO. The party that buys the property at the foreclosure sale (MFH in this instance) does not have to be a CHDO as long as the property comes to be owned by a CHDO within the thirty days. In this case it was undisputed that within thirty days following the foreclosure sale, the complexes were

owned by the new CHDOs and those organizations had filed the necessary documents with the appraisal district.

Kirkwood v. Jefferson County
2016 WL 536852 (Tex. App. – Beaumont, February 11, 2016, no pet.) (not reported)

Issues: Challenge to tax sale

In 2010, the county sued Gleason for delinquent taxes. When she did not answer, the court entered a default judgment. Gleason soon sold the property to Kirkwood. He recorded the deed, which said that he would be responsible for the taxes. He apparently even paid some of the delinquent taxes. In 2013 the tax office and the sheriff sent Gleason notice of a foreclosure sale and provided public notice of the sale. The notices satisfied §34.01 of the Tax Code, but no individualized notice was sent to Kirkwood. W. Properties bought the property at the sheriff's sale. A few months later, Kirkwood filed a petition for bill of review asking the court to undo the tax sale. The county asked the trial court to dismiss the case because: 1) Kirkwood had no standing; and 2) the county was immune from the suit. The trial court dismissed the case, and Kirkwood appealed.

The court of appeals reversed the trial court's dismissal of the case. The court reasoned that Kirkwood was entitled to notice of the tax sale, even though he had no interest in the property at the time of the original delinquent-tax suit. The county violated his constitutional right to due process of law by not sending him a notice. Because his rights were violated, he had standing to file his bill-of-review action. He was "entitled to attack the sale independent of the Texas Tax Code." The county was not immune from a suit for equitable relief arising from a violation of constitutional rights. The court of appeals sent the case back to the trial court for further proceedings.

Cameron County Appraisal District v. Rourk
2016 WL 380309 (Tex. App. – Corpus Christi-Edinburg, January 28, 2016, no pet. hist.) (not reported)

Issues: Immunity from suit

This is the latest development in a long-running dispute between the appraisal district and various owners of travel trailers and recreational vehicles. The property owners claim that their vehicles are exempt from taxation under §11.14 of the Tax Code as personal property not used to produce income. In an earlier opinion (*Rourk II*) the court of appeals determined that certain specific vehicles were exempt. In another opinion (*Rourk III*), the court determined that the appraisal district was immune from a suit under the Uniform Declaratory Judgments Act (UDJA). The property owners (including some who were not involved when the *Roark II* opinion was written) amended their pleadings to name the chief appraiser as a defendant. They claimed that he had wrongfully appraised their vehicles as taxable property. The trial court ruled that the chief appraiser was not immune from suit under the UDJA and that he had acted illegally. The trial court

even ordered the chief appraiser to pay the property owners' attorneys' fees. The district and the chief appraiser appealed.

A two-judge majority of the court of appeals reversed the trial court's judgment and entered judgment for the district and the chief appraiser. The majority explained that a public official is ordinarily immune from suit under the UDJA. But there is an exception called the *ultra vires* exception. An official cannot be sued for making wrong decisions in the exercise of his authority, but he can be sued for acting without any legal authority at all. He can also be sued if he fails to perform a purely ministerial act, i.e., an action that is so specifically prescribed by law that nothing is left to the official's discretion. A chief appraiser has the authority to make decisions about exemption claims. Doing so requires him to exercise judgment and discretion in interpreting the law and determining the relevant facts. Exemption decisions are not purely ministerial. Consequently, the chief appraiser was immune from the suit.

One judge partially disagreed with his colleagues and wrote a dissenting opinion. He believed that the earlier *Roark II* opinion was so specific with respect to the particular vehicles involved that the chief appraiser was left with no discretion concerning the exemption of those vehicles. Consequently he could be sued under the *ultra vires* exception.

Jack County Appraisal District v. Jack County Hospital District
484 S.W.3d 228 (Tex. App. – Fort Worth, January 14, 2016, no pet.)

Issues: Public property exemption

The hospital district leased a CT scanner from Celtic. The lease said that title to the scanner would remain with Celtic during the sixty-month term of the lease but the hospital district would be responsible for the taxes on it. The contract said the transaction was a "finance lease." At the end of the lease term, the hospital district could purchase the scanner for its fair market value. If Celtic and the district could not agree on the market value, the value would be determined by appraisers. The district's monthly rent payments would not be applied to the purchase price. Celtic rendered the scanner and the appraisal district appraised it in Celtic's name. Celtic paid the taxes and then billed them to the hospital district. The hospital district filed a protest claiming that the scanner was exempt as public property used for public purposes. The appraisal district responded that the scanner did not qualify for the exemption because it was owned by Celtic, a private company. When the ARB denied the protest, the hospital district filed suit. The trial court entered a summary judgment for the hospital district, and the appraisal district appealed.

The court of appeals affirmed the judgment for the hospital district. A two-judge majority reasoned that the hospital district should be considered the owner of the scanner under §11.11(h) of the Tax Code, which states that, "tangible personal property is owned by this state or a political subdivision of this state if it is subject to a lease-purchase agreement providing that the state or political subdivision, as applicable, is entitled to

compel delivery of the legal title to the property to the state or political subdivision, as applicable, at the end of the lease term." The majority thought that the scanner lease was a lease-purchase agreement even though the hospital district would still have to pay the full market value of the scanner if it wanted to buy the scanner at the end of the lease term. By paying the market price, the district could compel Celtic to deliver legal title.

One judge dissented and explained his opinion that the transaction was not a lease-purchase agreement. A lease-purchase agreement and a finance lease are distinct transactions defined by law. In a lease-purchase transaction, the payments are applied to the purchase price, and, at the end of the term, the lessee receives the title without having to make any additional payment or by making just a nominal payment. The scanner transaction did not give the hospital district the right to receive the title; it only gave the district the right to negotiate with Celtic for the purchase of the scanner at its market value. The district had no equity in the scanner and therefore had no equitable title.

Babaria v. City of Southlake
2016 WL 287523 (Tex. App. – Fort Worth, January 14, 2016, no pet. hist.) (not reported)

Issues: Appraiser testimony; discovery

This is not a tax case, but the court's opinion makes some interesting points related to proving the value of real property. Babaria owned eight acres and a house. The city proposed to take a quarter-acre strip for the widening of a road and for a sewer line. The parties disagreed about what the city should pay to compensate Babaria for the strip and for any changes to the value of his remaining property. In a jury trial, each side presented the testimony of an appraiser. The city's appraiser, Stearman testified based on an appraisal report that he had prepared and provided to Banaria in October, about three months before the date of the taking. His report estimated that the strip was worth $77,000 in October and stated that any use of the appraisal for any other date would make it "unreliable." He testified at trial that $77,000 was still the value of the strip on the date of the taking. The taking did not change the value of the remaining property. Stearman found sales of vacant tracts of approximately the same size as Babaris's eight acres, determined the value per square foot and applied that value to the quarter-acre taken by the city. Babaria objected to Stearman's methodology and objected to the fact that the city had not provided an updated appraisal or anything stating that Stearman would testify that his $77,000 value applied to the date of the taking. The trial judge overruled Babaria's objections and let Stearman testify. The jury's verdict fell between the values claimed by the two appraisers, but it was much closer to Stearman's value. Babaria appealed the trial court's judgment based on the jury's verdict.

The court of appeals affirmed the trial court's judgment and found that the trial judge did not err when he allowed Stearman to testify. The court explained that the city did not

need to supplement its discovery responses. The city produced Stearman's October report, and there was no evidence of any changes that would have made the report incorrect or unreliable by the time of the trial, especially in light of Stearman's testimony that his value was correct for the date of the taking. The caveat in the report was there to prevent its unauthorized use, not because the value was in flux. The court found nothing wrong with Stearman's methodology. The strip was vacant land, so Stearman did not make a mistake when he considered comparable sales of vacant land. He did not make a mistake when he considered sales of land approximately the same size as Babaria's in order to find the value per square foot.

Silberstein v. Trustmark National Bank
2016 WL 93871 (tex. App. – Houston [14th Dist.], January 7, 2016, pet. denied) (to be published)

Issues: Evidence of value

This is not a property tax case, but it does concern evidence offered to prove the values of real properties. Silberstein owned several rent houses subject to a mortgage held by Trustmark. (For the sake of brevity, this summary will give the figures relevant to just one typical house.) When Silberstein fell behind on his payments, Trustmark foreclosed. Trustmark bought the houses at its own foreclosure sale. It determined the amount of its bid through a rough income approach using a 20% capitalization rate. It paid $49,500 for one house. That was less than the amount that Silberstein owed, so Trustmark sued him for the deficiency. That led to the values of the houses being litigated in a jury trial. Silberman acted as his own expert. His opinions of value were based on an income approach with an 8% cap rate, $90,834 for the typical house. Trustmark presented an appraiser named Bradley, who had appraised the houses using the market approach and the cost approach. His market approach involved primarily foreclosure sales and yielded a value of $30,000. He admitted that his foreclosed comparables had also sold in recent arm's-length sales at considerably higher prices. He also used the cost approach and used $48 per square foot as the replacement cost of the houses, yielding a value of $56,686 for the typical house and its lot. He admitted that $60 per square foot would have been more realistic. The jury was asked to find the fair market values of the houses, but they were not instructed about the definition of fair market value. They found the values to be exactly equal to what Trustmark had paid at the foreclosure sale. Silberstein appealed the trial court's judgement based on the jury's verdict.

The court of appeals reversed the judgment and concluded that the evidence did not support the jury's verdict. The opinion explained that the market approach is favored by courts, but an appraisal must be based on voluntary sales, not foreclosures. Bradley's market approach was based on foreclosures and was not probative evidence of the values of the houses. Silberstein's income approach was competent evidence. So was Bradley's cost approach. The jury could have found a value between those two numbers ($90,834 and $56,686), but the evidence did not support a value of $49,500. The court of appeals sent the case back to the trial court for a new trial.

Hydrogeo, LLC v. Quitman Independent School District
483 S.W.3d 51 (Tex. App – Texarkana, January 6, 2016, no pet.)

Issues: Evidence of delinquent taxes

Hydrogeo bought mineral interests in two properties and then discovered that the interests had delinquent taxes for the years 2009-2011, when the interests were owned by someone else. Taxing units filed suit and named Hydrogeo and other owners and lienholders as defendants. The pleadings explained that the taxing units were also claiming: any other taxes that might become delinquent after the suit was filed; and penalties interest, costs, etc. that might accrue up until the entry of a judgment. Hydrogeo answered and specifically denied that it had owned the interests on January 1 of the years in question. In response to Hydrogeo's discovery, the taxing units provided tax statements based on their delinquent-tax rolls. Those statements still showed the interests being owned by the former owners. The taxing units did not provide Hydrogeo with updated statements showing the current amounts due and showing Hydrogeo as the owner. At trial, however, the taxing units offered the updated statements, and Hydrogeo objected. The trial court overruled the objection and accepted the updated statements. The trial court entered judgement for the taxing units based on the updated statements. The judgment stated that it was *in rem* only with respect to Hydrogeo. Hydrogeo appealed.

The court of appeals affirmed the judgment for the taxing units. The court explained that the taxing units should have updated their discovery responses. But a party can introduce evidence even though it failed to provide that evidence in discovery if the evidence will not unfairly surprise or prejudice another party. Hydrogeo knew that the taxing units were seeking everything that was due on the interests up until the date of judgment. Hydrogeo admitted being the current owner of the interests. It could not claim to have been unfairly surprised by the updated statements. The trial court did not err when it admitted the updated statements into evidence.

The court of appeals next explained that under §33.47, when the taxing units' updated statements were admitted, they constituted prima facie proof of everything the taxing units needed to prove. The taxing units did not need to prove that Hydrogeo owned the interests on January 1 of the relevant years in order to take an *in rem* judgement against Hydrogeo. Hydrogeo's denial that it had owned the interests in those years did undermine the taxing units' prima facie case. Hydrogeo also argued that because some boilerplate language in the taxing units' pleadings referred to personal property, they were improperly trying to enforce their liens against personal property. The court of appeals responded by noting that the judgment did not order any foreclosure against personal property. There was nothing in the record to support Hydrogeo's claims.

Attorney General's Opinions

Opinion No. KP-0081

May 3, 2016

Issues: Deferral of homestead taxes

The AG was asked several questions concerning the affidavits that property owners over sixty-five and disabled property owners may file with appraisal districts under §33.06 of the Tax Code to defer the collection of taxes on their homesteads. He explained that an appraisal district does not have to accept such an affidavit at face value. The district may investigate and determine for itself whether the requirements for deferral are satisfied.

If a property is used partly for residence homestead purposes and partly for other purposes, those other purposes may or may not be compatible with the homestead purposes. For example, the Fort Worth Court of Appeals once ruled that land could qualify as part of a homestead even though it also qualified as open-space agricultural land. If the uses are compatible, a property would qualify for deferral even if it were used partially for non-homestead purposes. But if the uses were incompatible, the appraisal district could disallow deferral for the whole property. A property owner might be able to have his property surveyed and subdivided onto two properties in order for one of those properties to qualify for deferral, but the appraisal district could not require the owner to do that.

Opinion No. KP-0072
March 17, 2016

Issues: Homestead exemption

Last year the Texas Constitution was amended to increase the general homestead exemption applicable to school taxes to $25,000. The implementing legislation, Senate Bill 1, also prohibited a school district, city or county that had a percentage homestead exemption in place in 2014 from repealing or reducing that exemption before the end of 2019. But S.B. 1 did not take effect until the constitutional amendment was approved by the voters on November 3, 2015. The A.G. was asked whether a taxing unit could repeal or reduce its percentage exemption before S.B. 1 took effect.

He concluded that any attempt by a taxing unit to repeal or reduce its percentage exemption would have been voided retroactively when S.B. 1 took effect. Although the Texas Constitution generally prohibits retroactive laws, a law can have retroactive effect if it serves a “compelling public interest” and if it does not have a significant detrimental impact on a party’s settled expectations. Further any impact on a school district would be minimal because it would be partially offset by changes in the amount of state aid that the district would receive.

Opinion No. KP-0066
February 16, 2016

Issues: Public property exemption

The Attorney general was asked about two student housing developments being constructed by private companies on land leased from the Texas A&M System. One lease provided that the improvements would be owned by the private company during the term of the lease, then become property of the System. But the System would have an option to purchase the company's right title and interest during the term of the lease. The AG explained that the improvements would be exempt if the System had equitable title during the term of the lease. Equitable title is defined as the present right to compel legal title. But, the AG declined to provide a more definite answer.

The other project would be used to provide housing to both Texas A&M students and students of Blinn College. The AG reasoned that a court would probably focus on §11.11(e) of the Tax Code, which exempts property "held or dedicated for the support, maintenance, or benefit of an institution of higher education." Exempt property can be used to provide residential housing for students of an institution higher education, even if they are not students of the particular institution that owns the property. Because Texas A&M and Blinn College are both institutions of higher education, the property could be used to house students from both.

The AG also pointed out that exempt student housing could lose its exemption if its use changed.