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2017 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

Kilgore Independent School District v. Axberg
2017 WL 4542865 (Tex. App – Texarkana, October 12, 2017, no pet hist.) (to be published)

Issues: Governmental immunity

When the legislature increased the general school-tax homestead exemption in 2015, the bill, S.B. 1 included a provision prohibiting a school district from repealing or reducing an existing percentage homestead exemption until 2020. But the Kilgore ISD's Board of Trustees repealed the district's percentage exemption before S.B. 1 took effect. Axberg sued the district, each trustee and the superintendent claiming that the repeal was illegal and void. She sought a declaratory judgment and an injunction to undo the board's action. She also sought to have her 2015 taxes recalculated with the percentage exemption and a refund of the extra amount paid. The Attorney General intervened in the case, siding with Axberg. The defendants sought to have the case dismissed for reasons including immunity, failure to exhaust administrative remedies and a rule in the Government Code that generally prohibits a plaintiff from suing both a governmental entity and its employees on the same grounds. The trial court refused to dismiss the case, and the defendants appealed.

The court of appeals reversed the trial court's order in part, dismissing the claims against the trustees and the superintendent. The higher court, however, allowed the claims against the district to go forward. The court explained that governmental officials are generally immune from suit unless the suit concerns ultra vires actions. An official acts ultra vires if he acts with no legal authority or if he fails to perform a purely ministerial act, an act that the law requires him to perform. An official exercising discretion in the performance of his duties is immune. The superintendent did not act ultra vires. She didn't even vote on the repeal of the exemption. She simply did her job by implementing the decision of the board. No trustee acted ultra vires. Each of them merely did his/her duty by voting on a proposal before the board. They were immune from the suit.

The district itself, however was not immune. A governmental entity is not immune from a suit challenging the validity of an enactment if the suit seeks only a declaratory judgment or an injunction. A plaintiff cannot sue for money damages but may sue for the refund of an allegedly illegal tax if the plaintiff paid the tax under duress. Axberg was not required to take her claim before the ARB because there were no disputed facts and the issues she raised were purely legal. Section 101.106 of the Government Code sometimes forces a plaintiff to choose between suing a governmental employee and suing the governmental entity if the claims against them are the same. But Axberg's claims against the superintendent were not the same as her claims against the district. Thus, her mistaken claims against the superintendent did not prevent her from suing the district. The court of appeals sent the case back to the trial court for consideration of claims against the district.

Almeter v. Bastrop Central Appraisal District
2017 WL 4478217 (Tex. App. – Austin, October 5, 2017, no pet hist.) (to be published)

Issues: Agricultural appraisal

Almeter applied for open-space agricultural appraisal of her fifty-two acres of land in 2015. The appraisal district denied her application, and the ARB denied her protest. She filed suit. She claimed that her land should qualify for ag appraisal even though it did not meet the district's guidelines for native pasture because the guidelines were invalid. The guidelines said that a livestock operation should have at least seven animal units on the property year-round with a stocking rate of one animal unit per five to eight acres. Before the case could be tried, Almeter amended her pleadings to add claims for 2016. The district filed a motion for summary judgment concerning 2015. The evidence showed that in the first half of 2015, Almeter built some fences, dug two wells and had electricity connected to run a water pump. In September, a lessee placed four head of cattle on the land, but they soon broke through the fence and spent the remainder of 2015 and all of 2016 on a neighbor's land. The trial court granted the district's motion for both 2015 and 2016 and Almeter appealed.

The court of appeals affirmed the summary judgment for 2015. The higher court found no evidence that the district's guidelines violated the Tax Code or the comptroller's Ag Manual. An appraisal district's chief appraiser has the authority to adopt degree-of-intensity standards as long as the standards are reasonable and do not contradict the Tax Code. The evidence did not raise a genuine issue of material fact about whether Almeter's land was used for agriculture to the degree of intensity generally accepted in the area. The court of appeals explained, however, that the trial court should not have entered a summary judgment for 2016, because the district's motion addressed only 2015. The court of appeals sent the case back to the trial court for consideration of 2016.

Fernandez v. Manwani
2017 WL 4272352 (Tex. App. – San Antonio, September 27, 2017, no pet. hist.) (not reported)

Issues: Excess proceeds following tax sale

In 2010, Landa and Fernandez borrowed money from Manwani and gave Manwani a promissory note and deed of trust on their real property. The deed of trust was recorded in the county deed records. Fernandez died in 2011, and her interest in the property passed to her heirs. In 2013 Landa and the heirs were behind on their payments to Manwani. Landa gave Manwani a deed in lieu of foreclosure in exchange for being released from the note. In 2014, taxing units sued Landa and the heirs for delinquent taxes. The sheriff sold the property, and Manwani bought it at the tax sale. The sale resulted in approximately $46,000 in excess proceeds. Both Manwani and the heirs filed claims for the excess proceeds. The heirs claimed that Manwani's lien on the property had been lost because the deed of trust mistakenly said that the note matured on June 30, 2010, the same day on which it was executed. Manwani had not acted within the four-year limitations period to reform the deed of trust. Manwani responded that, when executed, the deed of trust reflected the correct maturity date of June 30, 2030 and that it had been altered sometime after that without his knowledge. He did not learn of the alteration until 2016. The trial court believed Manwani, and awarded him the excess proceeds. The heirs appealed.

The court of appeals affirmed the trial court's order. The court explained that, ordinarily, a party to an instrument is presumed to know about a mistake in the instrument immediately. That presumption can be rebutted. When it is, the statute of limitations doesn't start to run until the party learns of the mistake. In this case, the presumption that Manwani knew about the mistake in 2010 was rebutted by evidence that the deed of trust was subsequently altered. The conduct of the parties, including the payments made by Landa and Fernandez and Landa's deed in lieu of foreclosure showed that they knew that the note did not expire on the date that it was executed. The trial court could reasonably conclude that the statute of limitations did not start to run until 2016 when Manwani actually learned of the mistake in the deed of trust. He had a right as a lienholder to claim the excess proceeds. Further, Manwani's claim had priority over the heirs' claim. Under §34.04 of the Tax Code, a lienholder has priority over the heirs of a former owner when it comes to distributions of excess proceeds.

Brazos Electrical Power Cooperative, Inc. v. Texas Commission on Environmental Quality
2017 WL 4081628 (Tex. App. -- El Paso, September 15, 2017, no pet hist.) (to be published)

Issues: Pollution-control exemption

Brazos owned two natural-gas power plants. Such a plant produces excess heat which can be vented to the outside using a spooling device. Or the excess heat can be applied to a heat system recovery generator (HSRG), which uses the excess heat to create steam and generate more electricity. In each instance, Brazos applied to have its HSRG approved by the TCEQ for a pollution-control exemption. Article VIII, §1-l of the Texas

Constitution and §11.31 of the Tax Code govern pollution-control exemptions, along with the TCEQ's rules. Section 11.31(k) includes a list of types of properties entitled to special consideration, and the list includes HRSGs. If an item, including an item on the "k-list," limits pollution but serves another purpose as well, the TCEQ evaluates it using a cost-analysis procedure (CAP) and a formula that looks like this:

$$\frac{(Capital\ cost\ new - Capital\ cost\ old) - net\ value\ of\ marketable\ material\ generated}{Capital\ cost\ new}\ x\ 100 = exemption\ \%$$

"Capitol cost new" refers to the cost of the new equipment. "Capitol cost old" refers to the cost of comparable equipment without the pollution-control feature. If the new pollution-control equipment is actually cheaper than the older alternative, the formula yields a negative number and the TECQ does not allow any exemption. That is what happened when the TCRQ determined that the older alternative to Brazos's HRSG was a boiler costing more than the HRSG. Brazos, on the other hand, claimed alternatively that the capitol cost old should be based on a relatively cheap spooling device or that it should be zero because there was nothing comparable to an HRSG. Brazos's calculations would have exempted 80% or 100% of the value of the HRSG. The TCEQ rejected Brazos's arguments and denied the exemption. When Brazos filed suit for judicial review of the agency's decision, the trial court ruled for the TCEQ, and Brazos appealed.

The court of appeals affirmed the trial court's ruling for the TCEQ. The higher court explained that exemption laws are strictly construed with all doubts being resolved against the granting of an exemption. After parsing carefully through the language of §11.31, the court concluded that equipment is not automatically entitled to an exemption merely because it is on the k-list. The property owner must demonstrate that it installed the equipment for pollution-control purposes. The TCEQ may consider whether it would be rational for the owner to install the equipment for other purposes such as cutting costs or producing more product. A property owner is not entitled to a pollution-control exemption for doing something that it would do anyway. The k-list creates a presumption that certain items produce environmental benefits, but the TCEQ may still find that the item does not qualify for the exemption. The court also concluded that the TCEQ had not skirted formal rule-making procedures by effectively taking HRSGs off the k-list. The agency had not made or changed any rules by merely arguing that Brazos's HRSGs did not qualify for exemption.

The court of appeals went on to explain that the TCEQ's application of the CAP formula was reasonable. Brazos's argument that the capital cost old was zero was unreasonable because it would result in a 100% exemption for equipment that was, at most, used only partly for pollution control. The argument that the capitol cost old should be based on the cost of a spooling device was not so compelling that the TCEQ could not reject it and conclude that the two items were not really comparable. The agency's decision to base the capital cost old on the cost of a boiler was reasonable.

One judge dissented, arguing that any equipment on the k-list was entitled to some exemption.

Vitol, Inc. v. Harris County Appraisal District
2017 WL 3316665 (Tex. App. – Houston [14th Dist.], August 3, 2017, no pet.) (to be published)

Issues: Delivery of notices; exhaustion of remedies

Vitol claimed that approximately $15 million worth of gasoline was not taxable in Harris County in 2014 because the gasoline was in interstate commerce. On June 20, the appraisal district sent Vitol a notice of appraised value showing that the gasoline was taxable and not subject to any exemptions. Vitol did not file a timely protest, but it did engage in some informal communications with the district concerning the taxability of the gasoline. In late September, the district sent Vitol an e-mail explaining that its interstate-commerce claim had been denied and that Vitol had been notified of that fact in the notice of appraised value. Vitol then filed a failure-to-deliver-notice protest with the ARB under §41.411 of the Tax Code claiming that the district owed it another notice concerning the denial of its interstate-commerce claim. The ARB denied the protest, and Vitol then sued the district. At the district's request, the trial court dismissed the case, and Vitol appealed.

The court of appeals affirmed the dismissal of the case. The court of appeals explained that under §41.44, Vitol's deadline for protesting the appraisal of its gasoline was thirty days after the district sent the notice of appraised value. Vitol did not file a timely protest. Vitol could not avoid or extend that deadline by filing a failure-to-deliver-notice protest because the notice of appraised value gave it the necessary information about the appraisal of the gasoline. Because Vitol did not protest within thirty days of the delivery of that notice, it lost its right to complain about the interstate-commerce issue.

Freestone Power Generation, LLC v. Texas Commission on Environmental Quality
2017 WL 3044547 (Tex. App. – Austin, July 11, 2017, no pet. hist.) (not reported)

Issues: Pollution-control exemption

This case involves the same issue decided in the *Brazos Electrical Power Cooperative* case discussed above, but the court's opinion reaches the opposite result. Several power plants installed heat system recovery generators (HSRGs). The property owners asked the TCEQ to approve exemptions for the HSRGs. The TCEQ evaluated the requests and denied them based on its cost-analysis procedure (CAP). The owners insisted that the HSRGs must receive some partial exemptions because HSRGs are listed among the types of items entitled to special treatment from the agency under §11.31(k) of the Tax Code. The TCEQ disagreed, and so did the trial courts. The property owners appealed to the Austin Court of Appeals.

The court of appeals reversed the trial courts and ruled that any equipment on the k-list is entitled to some exemption regardless of how or whether it might actually be used.

"Thus, by definition, HRSGs meet the constitutional and statutory requirement that they be used to meet environmental laws." The TCEQ could determine the proportion of a device's use that was for pollution control, but it could not deny the exemption altogether. The court send the cases back to the TCEQ for further consideration.

Editor's Comment: The Austin Court of Appeals' ruling is nonsensical and dangerous. The court thinks that the legislature can satisfy *even constitutional standards* by simply deeming something to be true regardless of whether it actually is true. For example, the legislature might deem that anybody who experienced a cavity in his tooth was a disabled veteran and qualified to receive tax benefits for disabled veterans. The legislature has never before been given that kind of power to defy reality.

Harris County v. Harris County Appraisal District
2017 WL 2686328 (Tex. App. – Houston [1st Dist.], June 22, 2017, no pet. hist.) (to be published)

Issues: Foreign trade zones; taxing unit challenges

In 1995, a foreign trade subzone was created and included a refinery. The Port of Houston was the grantee, and Crown Central was the operator. The personal property in the subzone was exempted from taxation under 19 U.S.C. §81o and §11.12 of the Texas Tax Code. In 2005, the refinery was sold to PRSI(DE). PRSI(DE) applied to Customs and Border Protection (CPB) to approve it as the new operator of the subzone. The Port agreed, and CBP approved the new operator. In 2006, PRSI(DE) was merged into its parent corporation, PRSI(CT) and ceased to exist as a separate entity. PRSI(CT) applied to the CBP to be named as the subzone's new operator. When the Port didn't agree, PRSI(CT) took the position that it didn't need CBP's approval because it wasn't really a new operator. In 2009, the CBP responded that PRSI was a new operator and that the CBP wouldn't approve it without the Port's agreement. PRSI(CT) asked the CBP to reconsider its determination. In 2013, the CBP affirmed its earlier ruling. During the application process, the CBP granted PRSI(CT) month-to-month extensions allowing it to operate the subzone. The appraisal district continued to exempt the bpp in the subzone. Following its 2013 ruling, however, the CBP deactivated the subzone.

Following the CBP, action, the county filed a challenge petition with the ARB claiming that the district had erroneously exempted the bpp in the years 2006-2013. The ARB denied the petition and the county took its claims to court. The trial court entered a summary judgment in the district's favor, and the county appealed.

The court of appeals reversed the trial court and ruled for the county. The court of appeals explained that the FTZ exemption applies to only property "admitted" into a foreign trade zone or subzone "activated" by the CBP. PRSI(CT) was a new operator, and it was required to apply to the CBP for a new activation of the subzone prior to taking over. A new activation would have required the Port's approval. The CBP's month-to-month extensions did not serve to activate the subzone. The CBP had acted in a judicial capacity when it made its decision that a new activation was required, and

the court of appeals ruled that the principle of collateral estoppel prevented it from second-guessing the CBP. Because the subzone was not activated after PRSI(CT) took it over, the bpp in the subzone was not exempt.

Advanced Powder Solutions, Inc. v. Harris County Appraisal District
2017 WL 2561338 (Tex. App. – Houston [14th Dist.], June 13, 2017, no pet. hist,) (to be published

Issues: Exhaustion of remedies; payment required for correction motion

Advanced Powder (AP) opened a business location in the county in 2012. Its bpp was taxable there for the first time in 2013. AP did not protest the 2013 appraisal, and it did not pay taxes on its bpp until mid-2014. Then it filed a motion with the ARB under §25.25(c) seeking a correction of the 2013 appraisal roll. The ARB dismissed the motion because AP had paid the taxes late. AP filed suit to appeal the ARB's decision. The trial court dismissed the case for want of jurisdiction, and AP appealed the matter to the court of appeals.

The court of appeals affirmed the trial court. The court of appeals explained that when an ARB dismisses a §25.25 motion due to the property owner's failure to make the tax payment required by §25.26, the owner may seek judicial review over the ARB's decision under §42.01(a)(1)(C). That was what the ARB had done in this case even though its order did not use the exact language in the Code. In the appeal, the property owner may attempt to show the trial court that the owner did not forfeit the right to a determination of its motion by failing to pay taxes. Without that showing, the court has no jurisdiction to consider the merits of the motion. In this case, there was no evidence that AP had made any timely tax payment. Thus, the trial court could not consider the merits of AP's motion.

AP argued that §42.08, which governs tax payments in connection with Chapter 42 lawsuits gives a property owner the option of paying the amount of taxes that it paid for the preceding year. Because it had no bpp in the county for 2012, its payment of zero for 2013 was enough to satisfy §42.08. The court rejected that argument and explained that in order to show that the ARB should have considered its motion, AP would have to show that it complied with §42.26, and a payment of zero did not satisfy §42.26. Because the ARB could not consider the merits of AP's motion, the trial court could not consider them either.

McKnight v. Moss
2017 WL 2462315 (Tex. App. – Tyler, June 7, 2017, no pet.) (not reported)

Issues: Redemption following tax sale

McKnight's real property was sold at a tax sale and purchased by Moss. McKnight wanted to redeem the property. He was apparently not successful in dealing with Moss directly because he made his redemption payment to the tax office. Moss then

intervened in the delinquent-tax suit and challenged McKnight's redemption. Moss filed a motion for summary judgment and an affidavit in which he claimed to have incurred costs of approximately $8,600 that were not reimbursed by McKnight. McKnight did not respond to Moss's motion, which was granted by the trial court. McKnight appealed.

The court of appeals reversed the trial court's summary judgment. The higher court explained that redemption laws are liberally construed in favor of the right to redemption. A purchaser challenging a redemption has the burden of proving that the redemption was ineffective. Moss failed to meet his burden of proof with his affidavit that made only a general claim of unreimbursed costs. He did not itemize or explain the costs or state that they were reasonably spent for maintaining, preserving, or safekeeping the property. Consequently, his affidavit did not support the summary judgment. The court of appeals sent the case back to the trial court for further proceedings.

Schneider v. Williamson Central Appraisal District
2017 WL 2417836 (Tex. App. – Austin, May 31, 2017, no pet. hist.) (not reported)

Issues: Governmental immunity; exhaustion of remedies

Schneider claimed that the appraisal district had appraised his property unequally, primarily because he didn't like the way the district determined the size of his improvements. After an unsuccessful protest before the ARB, he sued the district. He claimed that the district's measuring techniques somehow violated the Texas Constitution, and he sought a declaration to that effect. He claimed that the measurements were ultra vires, i.e., wholly outside the district's legal authority. The trial court entered summary judgment for the district, and Schneider appealed.

The court of appeals affirmed the trial court's judgment for the district. The higher court explained that Schneider had not shown that the district had violated any of the Tax Code's standards, found in §§42.26, for appraisal equality. A governmental entity is immune from an ultra vires claim. Such a claim can only be filed against a governmental official or employee. Schneider had not sued any such person. Further, Schneider could not seek a declaration. The Tax Code sets out the exclusive procedures and remedies available to a property owner who disagrees with the appraisal of his property. Neither a declaration nor an injunction is not available as an alternative to the Code's remedies.

Cantu v. Elbar Investments, Inc.
2017 WL 2180715 (Tex. App. – Houston [1st Dist.], May 18, 2017, no pet.) (not reported)

Issues: Challenge to tax sale

Cantu took out a $21,000 property-tax loan from Tax Ease, and Tax Ease acquired the tax liens on Cantu's property. When Cantu didn't pay, Tax Ease foreclosed, and Elbar bought the property at the foreclosure sale for $65,000. Cantu sued Tax Ease and Elbar trying to undo the foreclosure sale. But Cantu did not tender any payment to Tax Ease

or to the court in connection with his suit. The trial court entered summary judgment for the defendants, and Cantu appealed.

The court of appeals upheld the trial court's summary judgment on the basis of Cantu's failure to tender payment. The court cited two relevant laws. Common law requires a mortgagor to tender the amount owed to the mortgagee as a condition of challenging a foreclosure. Section 34.08 of the Tax Code requires a party challenging a tax sale to pay into the registry of the court the amount of the delinquent taxes and related sums or, alternatively, to file an oath of inability to pay. Cantu argued that the excess proceeds held by the court should satisfy that requirement. The court of appeals explained that Cantu had not satisfied the procedural requirements of §34.04. He had not filed a petition claiming the excess proceeds, and the trial court had not determined his claims to the proceeds. Neither did he present any evidence that he was the rightful owner of the proceeds. Consequently, *even if* Cantu were correct that excess proceeds could be considered as a tender of payment, he had not shown that that rule should apply in this case.

Floyd v. Wharton County
2017 WL 2180697 (Tex. App. – Corpus Christi-Edinburg, May 18, 2017, no pet.) (not reported)

Issues: Vacating delinquent-tax judgment; court's jurisdiction over defendants

In 2013, the trial court entered a delinquent-tax judgment in favor of the taxing units and against Floyd and others. In 2014, the taxing units filed a motion asking the court to vacate the judgment so that new parties could be added. The trial court vacated the judgment and reopened the case. It entered a new judgment for the taxing units on August 17, 2015. The deadline for any notice of appeal was September 16, 2015. On September 30, 2015, Floyd mailed in a notice of appeal, which was received by the court of appeals on October 5, 2015. He did not include a motion for additional time to file the notice of appeal. On November 2, he filed an amended notice of appeal, which included a motion for extra time claiming that medical problems had kept him from filing his notice of appeal timely. The court granted the motion and accepted the notice of appeal. On appeal, Floyd claimed that the trial court should not have reopened the case and that he and some deceased defendants had not been properly served with notice of the suit. The County claimed that Floyd had not timely perfected his appeal.

The court of appeals first addressed the requirements for a timely appeal. A party seeking to appeal a trial court's judgment must file a notice of appeal within thirty days of the judgment. If he misses that deadline, he can file his notice within the following fifteen days along with a motion showing why he didn't file the notice on time. The court of appeals, however, ruled that if the party files the notice during that fifteen-day extended filing period, the notice *implies* a motion for extra time. Because Floyd filed his notice during the extended period and because he followed it with an amended notice explaining his need for extra time, he satisfied the requirements, and his appeal was

timely. His notice of appeal was mailed before the extended deadline and it was received by the court within the ten days following that deadline.

The court next concluded that the trial court had acted properly when it reopened the case. Section 33.56 of the Tax Code allows taxing units to petition a trial court to vacate a judgement and reopen a case for reasons including the need to join additional parties. The fact that the taxing units called their document a *motion* to vacate the judgement instead of a *petition* was of no consequence because the court considered the substance of the document rather than its title.

Finally the court addressed the question of service of process. The court explained that Floyd had waived any defects in service when he filed an answer in the case. The deceased defendants were properly served by the posting of the necessary notice at the courthouse well before the August 17 judgment.

Harris County Appraisal District v. Texas Workforce Commission
2017 WL 2023616 (Tex., May 12, 2017)

Issues: ARB members' eligibility for unemployment compensation

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 Texas Supreme Court agreed to consider the case.

The Supreme Court affirmed the judgment for the TWC. The Court explained that the relevant statute was §201.041 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 under the contract and in fact." The fact that a person receives pay for his services raises 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. In reviewing the TWC's decision, the Court applied the very deferential substantial-evidence standard and concluded that there was more than a scintilla of evidence to support the agency.

Under the TWC's regulations, twenty factors are potentially relevant to the question of whether someone is an employee. (Those factors generally seem designed to distinguish between employees and independent contractors in the private sector.) The Court described each factor and found that several of them supported the TWC's conclusion. ARB members were required to receive training and the district paid for their training. The district's functions and the ARB's functions were integrated; both served the goal of accurate appraisals. ARB members could not sub-contract out their duties.

The district hired and paid the ARB's support staff. ARB members were paid in "regular amounts." The district paid the ARB members' business and travel expenses and furnished the tools and equipment used by the members. A member could perform his functions only through his relationship with the district. A member could quit without creating liability to the district. The Court further concluded that Tax Code provisions separating the ARB from the district were not intended to address the question of whether ARB members were employees.

The Court also rejected the district's argument based on §201.063 of the Labor Code, which states that a "member of the judiciary" performing services for a local government is not an employee. The Court reasoned that ARB members were administrative not judicial officers. They were not part of the judicial branch of government.

Mayfield v. Overton Independent School District
2017 WL 1908643 (Tex. App. – Tyler, May 10, 2017, no pet.) (not reported)

Issues: Vacating delinquent-tax judgment; mootness

Mayfield was in the process of appealing a trial court's delinquent-tax judgment against her when the taxing units filed a motion with the trial court asking the court to vacate the judgment under §33.56 of the Tax Code. When the trial court granted that motion, the taxing units filed a motion asking the court of appeals to dismiss the appeal because it had become moot. In a short opinion, the court of appeals explained that the appeal was moot because there was no longer a final appealable judgment from the trial court. The court of appeals granted the taxing units' motion and dismissed the appeal.

Gonzales v. Dallas County Appraisal District
2017 WL 1684667 (Tex. App. – Dallas, May 3, 2017, no pet.) (not reported)

Issues: Standing to sue; baseless lawsuits

Gonzales sued the appraisal district and a property owner named Lyons Equities alleging that her land was appraised unequally compared to land owned by Lyons. Her suit was dismissed because she did not own the land in question. She had conveyed it to a corporation called Lenola. She was the owner of Lenola's stock, but that did not make her the owner of the land. The trial court's judgment also awarded Lyons its attorneys' fees because Gonzales's suit against it was baseless. Gonzales lost her appeal of that judgment, but she refused to pay Lyons's attorneys' fees. Lyons applied to the trial court for an order directing Gonzales to turn over her stock in Lenola. The trial court entered that order and Gonzales appealed that order

The court of appeals affirmed the turnover order. The court explained that it was too late for Gonzales to contest the original judgment against her (which had already been appealed and affirmed) unless she could show that it was absolutely void, which she could not. She failed to properly brief any other issues, so the court of appeals did not consider them.

Sullivan v. Sheridan Hills Development L.P.
2017 WL 1719170 (Tex. App. – Houston [14th Dist.], May 2, 2017, no pet hist.) (not reported)

Issues: Governmental immunity

Sheridan sued the appraisal district challenging the 2013 appraised value of its property. Sheridan paid taxes in an amount equal to what it had paid in 2012, about two-thirds of the 2013 assessment. Parties settled the appraisal case, and, as a result of the settlement, Sheridan owed about $561,000 in additional base taxes. The TAC billed Sheridan for that amount and included penalties and interest in the amount of $101,000 pursuant to §42.41(c) of the Tax Code. Sheridan objected to paying the penalties and interest. It paid the base tax and paid the penalties and interest under protest. It then sued the TAC demanding the refund of penalties and interest. The trial court entered summary judgment for Sheridan, and the TAC appealed on the grounds that the suit was barred by governmental immunity.

The court of appeals reversed the trial court's summary judgment and dismissed the case. The court explained that governmental entities and governmental officials acting in their official capacities are immune from lawsuits, even suits for declaratory judgments and writs of mandamus. There are a few exceptions to this rule. An official can be sued with a claim that he acted ultra vires (i.e., wholly outside his legal authority) or a claim that he failed to perform a purely ministerial (i.e., non-discretionary) act required by law. An official can be sued in a mandamus case if he clearly abused his discretion. Even under those circumstances, however, the plaintiff can generally not get a judgment for money. Additionally, a taxpayer may sue to recover an illegally collected tax or fee if his payment was the result of fraud, mutual mistake of fact or duress. Sheridan's claims did not fall under any of those exceptions. Thus, the TAC was immune from the suit.

ETC Marketing, Ltd. v. Harris County Appraisal District
2017 WL 1535215 (Tex., April 28, 2017)

Issues: Taxability of gas in storage; interstate commerce

ETC bought natural gas, principally during the spring and summer, knowing that it could resell the gas at a profit in the fall and winter. It contracted with a related pipeline company to store the gas in a facility in Harris County. The pipeline company's facilities were all in Texas but they were connected to pipelines going into other states. ETC was free to decide what to do with its stored gas, but when the gas was sold, most of it was moved to other states using the network of pipelines. The appraisal district appraised the gas and ETC protested, claiming that the gas could not be taxed because it was in interstate commerce. The ARB denied ETC's protest and a trial court entered a summary judgment for the district. The court of appeals affirmed the summary judgment, and the Texas Supreme Court agreed to consider the case.

The Supreme Court affirmed the rulings of the lower courts and concluded that the gas was taxable in Texas. The court explained that the so-called dormant Commerce Clause of the U.S. Constitution may sometimes prohibit taxation that interferes with interstate commerce. Cases like this one involve two questions. First, a court must determine whether taxing the property "implicates" interstate commerce. ETC's gas was involved in interstate commerce because it was in an interstate pipeline system and because most of it would be sold out of state. Where interstate commerce is implicated, the court must decide whether the taxes satisfy a four-part test created by the U.S. Supreme Court and called the *Complete Auto* test. The tax must: (1) apply to an activity with a substantial nexus with the taxing state; (2) be fairly apportioned; (3) not discriminate against interstate commerce; and (4) be fairly related to the services provided by the state.

The Supreme Court devoted most of its opinion to the whether ETC's gas had a substantial nexus with Texas. It found the necessary nexus because the gas was stopped in Texas for ETC's business purposes. ETC has business reasons for storing the gas, and it was under no obligation to send the gas out of state. The fact that the pipeline company was in possession of the gas did not matter. Neither did the question of whether ETC had offices and employees in Texas. The Court went on to conclude that the taxes were fairly apportioned because ETC would not face multiple taxation of its gas, even if every state had the same tax laws as Texas. The taxes did not discriminate against interstate commerce. Taxes were uniformly applied to property regardless of whether it was in interstate commerce. The taxes were fairly related to the services provides by state and local governments. ETC's gas benefitted from governmental services like police and fire protection. Thus, every part of the *Complete Auto* test was satisfied.

Dish Network Corp. v. Collin Central Appraisal District
2017 WL 1536511 (Tex. App. – Dallas, April 27, 2017, no pet. hist.) (not reported)

Issues: Appraisal roll corrections

When Dish Network rendered business personal property in 2011, it claimed to have approximately $70 million of bpp, only $24 million of which was taxable. The appraisal district appraised the property at a figure very close to the $70 million. In 2012, Dish Network filed a motion with the ARB under §25.25(c) of the Tax Code claiming that the district had made clerical errors and appraised property that had not existed in the form or at the location shown on the 2011 appraisal roll. The ARB denied the motion, and Dish Network filed suit. The district filed a motion for summary judgment supported by an affidavit from one of its appraisers, and the trial court granted that motion. Dish Network appealed claiming that the evidence did not support the summary judgment.

The court of appeals affirmed the judgment. The court reviewed the appraiser's affidavit which explained that the district had reviewed and rejected Dish Network's theories that most of its bpp was not taxable. The district had arrived at its appraised value "through

a process of deliberate determination, reasoning and appraisal." That was sufficient to prove that the district's value was not the result of a clerical error because a clerical error does not include a mistake in judgment or appraisal methodology. In order to have an appraisal roll corrected to remove property that did not exist in the form or at the location described in the roll, a property owner must show that *no such property* existed at that location. Dish Network admitted that it had bpp at the locations identified on the roll. Consequently, it was not entitled to have the roll changed.

Mount Vernon United Methodist Church v. Harris County
2017 WL 1512251 (Tex. App. – Houston [14th Dist.], April 25, 2017, no pet.) (not reported)

Issues: Taxes on condemned property; exhaustion of remedies

The church owned land on which it had not sought or received an exemption. The land was subject to an old demolition lien in favor of the city. In 2016, the county condemned the land and deposited the proceeds with the trial court. The county and the other taxing units sought to collect their 2016 taxes from the proceeds held by the court. (The amount was minimal because the land received a prorated exemption as soon as the county owned it.) The city also sought to collect on its old demolition lien. The trial court released money to pay the taxes and to pay off the demolition lien, and the church appealed.

The church argued that the land should have had a religious exemption and should not have been taxed at all. The court of appeals, however, explained that if the church had wanted a religious exemption for the land, it should have filed an application with the appraisal district and, if necessary, it should have filed a protest with the ARB. It could not claim the exemption in the context of the condemnation case.

The church claimed that the land had become public property as soon as the county condemned it, and that the city could not enforce its demolition lien against public property. The court of appeals explained that when the land was condemned, the city's lien attached to the proceeds held by the trial court. Those proceeds were not public property, and that there was no reason that the city could not assert its claim against them. The court of appeals affirmed the trial court's rulings in favor of the taxing units.

DEK-M Nationwide, Ltd. V. Hill
2017 WL 1450016 (Tex. App – Houston [14th Dist.], April 18, 2017, no pet. hist.) (not reported)

Issues: Contesting tax sales

Taxing units sued Willis for delinquent taxes on several royalty interests. The trial court entered a judgment for the taxing units. Willis gave another creditor a deed of trust in the properties. At about the same time that the trial court offered the properties sold for taxes. that other creditor purported to foreclose the deed of trust and sell the properties

to its affiliated company, DEK-M. Then the sheriff proceeded with the tax sale and sold the properties to Hill. DEK-M sued the taxing units and Hill. DEK-M asserted multiple claims generally to the effect that the tax sale was void and that DEK-M had title to the properties. The taxing units responded with six affirmative defenses and Hill added two more. Any of those affirmative defenses would have supported a judgment against DEK-M. The trial court entered a summary judgment in favor of the taxing units and Hill, and DEK-M appealed.

The court of appeals explained that the trial court had not specified the grounds for its summary judgment. That meant that the judgment would stand unless DEK-M successfully challenged every possible grounds for it. DEK-M had not even attempted to challenge some of those possible grounds. Because there were unchallenged grounds that might have supported the trial court's judgment, the court of appeals affirmed that judgment.

Avery v. Guadalupe County Appraisal District
2017 WL 1337640 (Tex. App. – San Antonio, April 12, 2017, pet. denied.) (not reported)

Issues: Time for filing appeal; authority to tax

In 2015, Avery filed a protest claiming that his property was over-appraised and appraised unequally. He also claimed that his property could not be taxed in Texas or in the taxing units where it was located because property taxation was unconstitutional. The ARB held a hearing and, on July 22, 2015, issued an order denying the protest on the value issues. When Avery insisted that the ARB hear and consider his other grounds, the board held a second hearing and denied the protest on the constitutional grounds on October 16, 2015. Avery filed an appeal with the trial court on December 14, 2017. The appraisal district responded that Avery's suit was filed too late with respect to the value grounds, more than sixty days after he received the July 22 order. The district sought a traditional summary judgment and a no-evidence summary Judgment on Avery's constitutional claims. The trial court dismissed the value claims and granted summary judgment for the district on the constitutional claims. Avery appealed.

On appeal, Avery basically withdrew his value claims, admitting that they were moot in light of his constitutional claims. The court of appeals affirmed the trial court's summary judgment on the constitutional claims. The court explained that while Art. VIII, §1-e of the Texas Constitution prohibits state property taxes, it does not prohibit property taxes assessed by local governments. The taxes assessed on Avery's property were not state taxes because they were not imposed by the state and because the state did control them. The court went on to explain that the taxing units had the constitutional authority to tax all non-exempt real property and that there was no evidence that Avery's property qualified for any exemption. Avery's efforts to quote the Founding Fathers did not constitute any evidence in support of his claims.

Piwonka v. SPX Corp.

2017 WL 1181302 (Tex. App. – Houston [14th Dist.], March 30, 2017, no pet. hist.) (not reported)

Issues: Exclusive remedies; governmental immunity

This opinion addressed just a small part of a complicated case. The appraisal district determined that property owned by SPX was shown as taxable in the wrong taxing units on several years' appraisal rolls. The district filed a motion with the ARB asking it to correct the appraisal rolls under §25.25(c)(3) of the Tax Code. The ARB made the correction. Then SPX filed a protest with the ARB complaining about what the district and the ARB had done. The ARB denied the protest, and SPX filed suit against the district and the ARB to appeal the ARB's order. The TACs for affected taxing units proceeded with refunds and new tax bills for the past years based on the corrected appraisal rolls. SPX did not pay the taxes before the delinquency dates stated on the bills, and the TACs added penalties and interest to their tax rolls. SPX included the TACs as defendants in its suit and sought mandamus and declaratory relief against them. The TACs claimed that they were immune from the suit. When the trial court refused to dismiss them, they appealed.

In a limited, interlocutory appeal, the court of appeals considered only whether the TACs were immune, and it concluded that they were. The court first concluded that SPX had standing to sue because the allegedly erroneous changes to the appraisal rolls and the resulting back-assessments had caused SPX harm in the form of penalties and interest. The court next explained that the Tax Code's exclusive procedures and remedies did not allow a property owner to seek other remedies such as a declaratory judgment or a writ of mandamus. SPX had used the Code's procedures when it filed a protest with the ARB and then filed an appeal of the ARB's order. But the Code's procedures do not allow taxing units or their assessors to be parties to such cases. The Code's procedures were sufficient to protect SPX's right to due process. Its claims really concerned actions by the district and the ARB, and it could litigate those claims without including the TACs. The TACs were immune from the suit, and the court of appeals ordered them dismissed.

Leal v. Dallas County
2017 WL 1075635 (Tex. App. – Dallas, March 22, 2017, no pet.) (not reported)

Issues: Appealing a delinquent-tax judgment

In January of 2014, the trial court entered a default judgment against Leal in a delinquent-tax suit. Almost two years later, the district clerk's office issued an order of sale. In September of 2016, after it was too late to appeal the judgment, Leal attempted to appeal the order of sale. The court of appeals dismissed the attempted appeal quickly, ruling that on order of sale is not an appealable order.

JAMRO, Ltd. v. City of San Antonio
2017 WL 993473 (Tex. App. – San Antonio, March 15, 2017, no pet.) (not reported)

Issues: Governmental immunity; tax increment financing

The city and a developer, JAMRO, were both interested in development in a particular neighborhood. The city encouraged JAMRO to apply for the creation of a tax increment reinvestment zone (TIRZ), and JAMRO did so. The city took the necessary steps under Chapter 311 of the Tax Code to create the TIRZ. The city contemplated entering a development agreement with a company related to JAMRO, but the agreement was never signed. The city later changed its mind and terminated the TIRZ. JAMRO sued the city for breach of contract, fraud, and related claims. The city claimed that it was immune from the suit. The trial court agreed and dismissed the case. JAMRO appealed.

The court of appeals explained that a political subdivision is ordinarily immune from suits related to its governmental functions, i.e., functions involving governmental authority exercised in the interest of the general public. On the other hand a political subdivision can be sued with respect to its proprietary functions. In this case, the actions that the city took in contemplation of a tax increment financing plan were governmental functions. The city took steps detailed in Chapter 311, and §311.008 states that those steps serve a public purpose. The improvements contemplated by the city, roads, sewers, parks, etc., are governmental functions. Thus the city was immune from JAMRO's suit. The court of appeals affirmed the trial court's dismissal of the case.

Barrera v. Chererco, LLC
2017 WL 943436 (Tex. App. – San Antonio, March 8, 2017, no pet.) (not reported)

Issues: Contesting tax sales; adverse possession

Esequiel Barrera held real property under a deed that did not name his wife, Mary. In 2009, taxing units sued Esequiel for delinquent taxes. Mary was not named as a defendant. The court entered judgment for the taxing units and ordered the property sold. The sale occurred in November of 2010. The property was bid off to the taxing units who recorded the sheriff's deed. They later sold it to Chererco. Mary died in 2012. In 2014, four of her five adult children filed suit to challenge the tax sale. They claimed that Mary had had an ownership interest in the property, and, as her heirs, they had a right to challenge the sale. They also claimed that they had acquired the property through adverse possession after the tax sale. Chererco responded that the suit had been filed too late, after the limitations period set out in §33.54 of the Tax Code had passed. The trial court entered a summary judgment for Chererco, and the heirs appealed.

The court of appeals affirmed the trial court's judgment. The higher court explained that §33.54 requires a suit challenging a tax sale to be filed within one year after the sheriff's deed is filed, two years if the property was a homestead or agricultural land. It includes an exception for an owner who was not named in the delinquent-tax suit, but only if that owner continued to pay taxes after the tax sale. Neither Mary nor her heirs had paid the post-sale taxes. Their suit was filed too late. In order to use the three-year adverse-

possession statute the heirs had to show that they held the property under some title or color of title. But there was no deed or other instrument purporting to give them any title to the property.

In an effort to salvage some part of their case, the heirs argued that the courts could not resolve it completely because one of their brothers was not a party. The court of appeals disagreed. The court explained that it was possible to completely decide the claims among the parties to the suit. The judgment, however, would not prejudice any rights that the missing brother might have to raise claims of his own.

City of El Paso v. Mountain Vista Builders, Inc.
2017 WL912154 (Tex. App. – El Paso, March 8, 2017, no pet.) (to be published)

Issues: Exhaustion of remedies

This opinion is very confusing because the court obviously did not understand the differences between an appraisal district, an ARB and a taxing unit. It did not understand the differences between notices of appraised values and tax bills. We will endeavor to make some sense out of the court's opinion.

Taxing units sued Mountain Vista for delinquent 2006 taxes on lots in a subdivision it had developed. Mountain Vista filed only a general denial. At trial, Mountain Vista claimed that since 2006 it had sold the lots one at a time using a title company that had later gone out of business. The taxes must have been paid because the title company should have made sure that they were paid as the lots were sold. Mountain Vista also claimed that the "taxing authority" was sending "tax notices" to the wrong address. The taxing units asserted that Mountain Vista's lack-of-notice claim could not be raised in court because it had not been raised before the "CAD." The trial court entered judgment for Mountain Vista, finding that "notices" had been sent to the wrong address and that the taxes had been paid. The taxing units appealed.

The court of appeals overturned the trial court's judgment. The higher court ruled that Mountain Vista should have raised its lack-of-notice claims before the "CAD" or maybe the ARB. The court seemed to be discussing tax bills, but the law it cited (§41.411 of the Tax Code) deals with notices from appraisal districts and ARB's, not tax bills. In any event, the court of appeals ruled that the trial court had no jurisdiction to consider Mountain Vista's lack-of-notice claims.

The court of appeals went on to rule that Mountain Vista should not have been allowed to claim that the taxes had been paid. Payment was an affirmative defense that should have been included in Mountain Vista's written pleadings. Citing Rule 95 of the Texas Roles of Civil Procedure, the court said, "A payment defense requires the defendant to file with his plea an account stating distinctly the nature of such payment, and, failing that, the defendant shall not be allowed to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof." Mountain Vista might also have been attempting to raise other affirmative

defenses based on a claim that the taxing units did not interfere with the closings on the lots, but those affirmative defenses were also barred because they were not included in Mountain Vista's written pleadings. The court of appeals sent the case back to the trial court for further proceedings.

Editor's Comment: Section 41.411 allows a property owner to file a protest with an ARB based on a claim that the appraisal district or the ARB itself failed to deliver some notice to which the property owner was legally entitled. Section 41.411 does not concern tax bills. Neither an appraisal district nor an ARB has any authority over a claim that a taxing unit failed to deliver tax bills.

Valero Refining—Texas, L.P. v. Galveston Central Appraisal District
2017 WL 727276 (Tex. February 24, 2017)

Issues: Unequal appraisal

Valero owned one of three refineries in Galveston County. In 2011, the appraisal district appraised component parts of the refinery under several account numbers with a total value of just over $1 billion. After a partially successful protest, Valero took its unequal-appraisal claims to court. Its original pleadings identified five accounts including process units, pollution-control equipment (PCE), and tank facilities. As the trial began, Valero amended its pleadings to remove two accounts, including the PCE. Its experts compared the disputed parts of its refinery with comparable parts of the two other refineries. One of those refineries was substantially larger than Valero's and the other was substantially smaller. The smaller refinery could not refine oil as completely as the larger two. The experts adjusted the appraised values based on the refineries' "equivalent distillation capacities." EDC measures a refinery's capacity and complexity. The experts then took the median appraised value per EDC and applied the value to Valero's refinery. They performed their calculations once without considering the refineries' PCE and once with the PCE included. When they included the PCE, their conclusion of an equalized value was substantially higher. The experts could not explain why Valero had dropped the PCE from its suit. They admitted that the PCE was necessary and that it would be included in the sale of a refinery. They performed an analysis that did not include the PCE just because that is what Valero asked them to do. Based upon their analysis that did not include the PCE, the jury lowered the value of the three accounts by almost $190 million. The appraisal district appealed the trial court's judgment based on the jury's verdict.

On appeal, the district argued that because Valero had included only some of the refinery accounts in its suit, the trial court had no jurisdiction over the case. The court of appeals rejected that argument. The court of appeals, however, went on to conclude that Valero's evidence was not sufficient to support the jury's verdict. The court did not consider the validity of the method used by Valero's experts, and it thought that there was at least some evidence that the other refineries were comparable to Valero's. The differences between the refineries could be dealt with through adjustments. The court, however, criticized the experts for preparing an analysis that did not include the PCE.

The fact that Valero itself had dropped the account from its suit did not give the experts a reason for failing to consider it. The court of appeals overturned the trial court's judgment. Both sides asked the Texas Supreme Court to consider the case and the Court agreed.

The Supreme Court agreed that Valero did not need to include all accounts in order to invoke the trial court's jurisdiction. Because the district had divided the refinery into separate accounts, Valero was free to choose which accounts to include in its suit. The high Court thought that Valero's refinery could be compared to the smaller refinery. Properties do not have to be identical in order to be comparable. The court noted that both refineries served the same business purpose. The district had appraised them using similar methods and divided them into similar accounts. The district argued that the component parts of the refineries were to interconnected to be analyzed separately. The Court, however, thought that the district had undermined its own arguments by using multiple accounts. Because the district had separated the PCE into separate accounts, it had conceded that other parts of the refineries could be compared without reference to the PCE. The Supreme Court reversed the court of appeals and sent the case back to the intermediate court for further consideration.

In re Kelly
2017 WL 598498 (Bankr. N.D. Tex., February 14, 2017)

Issues: Redemption following tax sale; adverse possession

D. Realty purchased real property at a tax sale in 2014. Just before the two-year redemption period expired, Kelly tried to redeem the property. Kelly claimed that he had acquired the property through adverse possession and that he had been the owner at the time of the tax sale. D. Realty rejected Kelly's redemption efforts, and Kelly filed suit in the bankruptcy court in which his bankruptcy was being considered. He sought a declaration that he was an owner with a right of redemption and an order compelling D. Realty to cooperate with the redemption. The court had to decide whether the interest in the property that Kelly had acquired through adverse possession made him an owner with a right to redeem the property under §34.21 of the Tax Code.

The bankruptcy ruled for Kelly. The court cited §16.030 of the Civil Practice and Remedies Code, which says that someone who possesses a property adversely for the necessary time period acquires "full title" to the property. The adverse possessor has full title even without a court judgment and even without his recording any documents in the deed records. The court went on to explain that §34.22 of the Tax Code gives redemption rights to someone who was in possession of a property at the time that a delinquent-tax suit was filed or at the time of the tax sale and who claimed to own it, even if there was some defect in that person's title. Because Kelly was in possession of the property at the time of the tax sale, the statute gave him a right to redeem it.

Chambers v. San Augustine County Appraisal District
514 S.W.3d 420 (Tex. App. – Tyler, February 8, 2017, no pet.)

Issues: Mineral appraisals

Chambers signed an oil and gas lease on his land in Shelby County and retained a royalty interest in the minerals. The mineral interests in Chambers's land were pooled with interests in land located in San Augustine County. The appraisal district in San Augustine County determined that there had been a cross-conveyance of the mineral interests resulting in Chambers owning taxable minerals in San Augustine County. Chambers disagreed and, after an unsuccessful protest, sued the district. The trial court entered a summary judgement for the district, and Chambers appealed.

The court of appeals reversed the trial court's judgment. The higher court explained that the pooling of mineral interests ordinarily *does* effect a cross-conveyance. The particular contracts involved, however, may change that. In this case, Chamber's lease expressly said that pooling "shall not have the effect of exchanging or transferring any interest under" the leases. The unit designations stated that they were made subject to the leases. Thus, given the particular language of the relevant documents, Chambers had not cross-conveyed any interests and had not acquired any taxable minerals in San Augustine County. The district should not have appraised any San Augustine County property in his name.

Attorney General's Opinions

Opinion No. KP-0154
July 14, 2017

Issues: Rollback tax rates

A school district's debt tax rate was going down by 4¢ from 2016 to 2017. The district proposed raising its m & o tax rate by 2¢. The net effect would be a 2¢ reduction in the district's total tax rate from year to year. The district asked whether it would need to hold a ratification election on its proposed total tax rate. The Attorney General explained that a prior year's debt rate is not a factor in calculating a school district's rollback rate under §26.08 of the Tax Code. Only the current year's debt rate matters. A district does not get any credit for reducing its debt rate from year to year. The rollback rate really measures changes in m & o rates. In this instance, the district's proposed m & o tax rate exceeded the m & o component of the rollback rate, and that meant that the district would need to hold an election. The ballot would state that the district's proposed rate exceeded its rollback rate by 2¢.

Opinion No. KP-0147
May 11, 2017

Issues: Homestead exemptions

Section 11.13(l)(2)(B) says that a homeowner can keep her homestead exemption indefinitely even if she is not living in the homestead if the absence is . . . caused by the owner's . . . residency in a facility that provides services related to health, infirmity, or aging. The Attorney General was asked for some guidance about the breadth of this provision. For example, does it apply to newer types of independent living facilities intended for people who are general capable of living on their own? In response the AG pulled out his dictionary and quoted the definitions of some of the terms used in the statute. For example, a “facility” is an "establishment set up to fulfill a particular function or provide a particular service, typically an industrial or medical one." A “service” is "an act of assistance." “Health” means "the state of being free from illness or injury; a person's mental or physical condition." “Infirmity” means "physical or mental weakness." “Aging” is "the process of growing old." The AG did not think that a person living in a facility would have to actually receive services as long as they were available. He concluded that, “[A] court would likely construe subsection 1 l.13(l)(2)(B) to refer to an owner's temporary residence in an establishment set up to assist persons with overcoming illness or injury, or with needs related to physical or mental weakness or growing old, through a wide range of activities, regardless of whether the owner receives such services.”

Opinion No. KP-0144
April 24, 2017

Issues: School finance; homestead exemptions

The 2015 legislation that increased the school-tax homestead exemption 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. Some school districts did attempt to reduce or eliminate their percentage exemptions before the 2015 legislation took effect. In an earlier opinion (No. KP-0072) the Attorney General said that the school districts could not do that. This time, the Commissioner of Education asked the AG whether he should recognize the school districts’ efforts to reduce or eliminate their percentage exemptions when calculating their ASATR (additional state aid for tax reduction). The AG opined that the Commissioner should not consider the districts’ actions and should calculate the ASATR as though the districts had not attempted to change their percentage exemptions.