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2020 PROPERTY TAX CASES
And Attorney General's Opinions

Last updated: September 21, 2021

Cases

Dallas Central Appraisal District v. International American Education Association Inc.
618 S.W.3d 375 (Tex. App. – Dallas, December 29, 2020, no pet.)

Issues: Public property exemption

International American Education Association (IAEF) leased real property from a private owner and used it for a charter school. The lease included an option for IAEF to purchase the property. IAHF sought a public-property exemption for the property. The appraisal district denied the exemption on the grounds that the property was not publicly owned. After an unsuccessful protest before the ARB, IAEF sued the district. The trial court entered a summary judgement for IAEF and ordered the exemption of the property. The district appealed.

The court of appeals affirmed the trial court's judgment. The court of appeals explained that a party has equitable title to a property if the party has, "the present right to compel legal title." The court reasoned that the purchase option in the lease gave IAEF "the unqualified, unilateral right to assume fee title to the property." That was enough to establish that the property was publicly owned.

Kilgore Independent School District v. Anderson
2020 WL 7635966 (Tex. App. – Tyler, December 22, 2020, no pet.) (not reported)

Issues: Optional homestead exemptions

This is the latest chapter in a continuing saga. 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 a percentage homestead exemption "adopted . . . for the 2014 tax year" until 2020. The Kilgore ISD had a percentage homestead exemption originally adopted in the 1980s. The exemption had continued in effect through

2014. After S.B. 1 was enacted but before it became effective, the board of trustees repealed the exemption. Plaintiffs sued the district claiming that the repeal was illegal and void. They sought a declaratory judgment and an injunction to undo the board's action. They 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 the plaintiffs. In earlier chapters of this story, appellate courts ruled that the district was not immune from the suit and that S.B. 1 and the related constitutional amendment were retroactive and that they applied to the period before the bill formally took effect. The court of appeals sent the case back to the trial court in order for the lower court to consider the question of tax refunds.

The plaintiffs then tried converting the case into a class action on behalf of all homeowners in the district. The district responded with a new argument: its percentage homestead exemption was not covered by S.B.1 because the exemption was first adopted decades ago and not specifically for 2014. It argued that the bill prohibited the repeal of only exemptions adopted specifically for 2014. When the trial court rejected that argument, the district appealed for the third time.

The court of appeals rejected the district's argument and ruled for the plaintiffs. The court explained that the legislature had meant to preserve any percentage homestead exemption in effect in 2014 no matter when the exemption was first adopted. The higher court also rejected the district's vague argument that the plaintiffs should have exhausted some administrative remedies before filing their suit. The issue raised in the case (i.e., whether the district was barred from repealing its exemption) was purely a question of law, and the plaintiffs were not required to exhaust administrative remedies.

The court of appeals also rejected the district's argument that the case had become moot at the end of 2019 when S.B 1's prohibition against the repeal of exemptions ended. The court explained that the plaintiffs' claims concerning the years 2015-2019 were still "live."

Span Investment Group LLC v. Cameron Appraisal District
2020 WL 7549887 (Tex. App. – Corpus Christi-Edinburg, December 22, 2020, pet. denied) (not reported)

Issues: Discovery in appeals

This case involves the long, complicated story of an appraisal district's efforts to get discovery information from a property owner (Span) in the context of an appeal under Chapter 42 of the Tax Code. Span agreed to an order compelling it to provide the information. When it failed to do so, the trial court conducted a hearing on a motion from the district and issued another order directing Span to provide the information. That second order directed Span to reimburse the district for $1,800 in attorneys' fees. When Span failed again to provide the information, the district filed another motion, this time

requesting that the case be dismissed with prejudice so the Span could never refile it. The district also sought an additional $1,800 in attorneys' fees. Three days before the hearing on that motion, Span voluntarily dismissed its claims. But the district proceeded with its motions and was successful. The trial court dismissed the case with prejudice and awarded the district the additional attorney's fees. Span appealed the award of attorneys' fees.

The court of appeals affirmed the trial court's judgment. Span tried arguing that Rule 215 of the Texas Rules of Civil Procedure, which authorizes sanctions for discovery violations, did not apply to Chapter 42 appeals because it was not included in Chapter 42 itself. The court of appeals rejected that theory and explained that the Rules of Civil Procedure apply to all civil lawsuits. Span also argued that the trial court could not award attorneys' fees after Span had dismissed its claims. The court of appeals rejected that argument also. Span's voluntary dismissal was *without prejudice* to refiling the case. But the district's motion to dismiss the case *with prejudice* was still pending, so the case was still alive even after Span's dismissal. Span's dismissal did not moot the district's claims for dismissal with prejudice and for attorneys' fees.

City of Laredo v. United Independent School District
2020 WL 7258060 (Tex. App. – Corpus Christi-Edinburg, December 10, 2020, no pet.) (not reported)

Issues: Delinquent tax suits; parties to an appeal

Taxing units sued U.S. Trailer Relocators (USTR) for delinquent taxes on some trucks. The taxing units sought (*in rem*) the foreclosure of their tax liens but not seek to hold USTR personally liable for the taxes. USTR argued that it did not own some of the trucks and that others were only partially taxable in Texas because they were used in interstate commerce. After the trial court ruled for USTR, only one taxing unit, the school district appealed. The San Antonio Court of Appeals reversed the trial court's ruling and explained that appraisal-related claims could not be raised in defense to a delinquent-tax suit. A claim of non-ownership was not a defense to an *in rem* delinquent-tax suit. The case went back to the trial court. The lower court held a hearing to determine the amount of taxes owed to the school. But the other taxing units showed up and argued that they should also benefit from the appellate decision for the school. This time, the trial court awarded the school the taxes that it claimed but gave the other taxing units nothing. Both USTR and the other taxing units appealed.

This time, the appeal was transferred to the Corpus Christi-Edinburg Court of Appeals. The court quickly rejected USTR's claims because they had already been decided by the San Antonio court. (This is called the "law of the case doctrine.") The other taxing units argued that they should benefit from the earlier appeal because their claims were so interwoven with the school's claims that the claims could not be separated. The Corpus

Christi court rejected that argument and explained that the school could receive the relief to which it was entitled without the other taxing units receiving anything. Because they had not been parties to the earlier appeal, they were still bound by the trial court's first judgment denying their claims. The court of appeals affirmed the trial court's judgment ordering the foreclosure of only the school's tax lien.

SPX Corporation v. Altinger
614 S.W.3d 362 (Tex. App. – Houston [14th Dist.], November 19, 2020, no pet.)

Issues: Correcting appraisal rolls; exhaustion of remedies

SPX had business personal property at its location near Houston. During the years 2010-2013, the appraisal district determined that the property was taxable in certain taxing units (the Houston units). SPX paid the taxes assessed by the Houston units. In early 2014, the district determined that the property was really in different taxing units (the Cy-Fair units). The district filed a motion with the ARB under §25.25(c)(3) of the Tax Code alleging that the property did not exist in the form or at the location described in the appraisal rolls. The district sent SPX a notice that it had filed the motion, but SPX did not respond. The district did not request a hearing on its motion, and the ARB did not hold one. Three months later, the district, apparently acting on its own, changed the rolls to show SPX's property being in the Cy-Fair units. No one notified SPX until the Cy-Fair units sent tax bills in May. In September of 2014, SPX filed a protest complaining about the district's actions and alleged failure to deliver notice under §41.411.

The ARB held hearings on SPX's protests for 2011-2013 and on the district's §25.25 motion for 2010. It dismissed the protest for 2013 because SPX failed to appear for the hearing. It denied the protests for 2011-2012, finding that there had been no failure of notice. After a long delay, it granted the district's motion for 2010 even though the appraisal roll had already been changed. SPX sued the district, the ARB, and the chief appraiser. It sought declaratory, mandamus, and injunctive relief in addition to the remedies provided in the Tax Code. The defendants filed a combined motion for summary judgment and plea to the jurisdiction. Along with other arguments, that claimed that SPX had forfeited its right to appeal by not paying the Cy-Fair units' taxes timely. The trial court granted the defendants' motion, and SPX appealed.

The court of appeals affirmed the trial court's order in part and reversed it in part. The court of appeals first discussed SPX's duty to pay taxes. It relied on §31.04(a-1), which applies when a tax bill includes past years' taxes on omitted property. A property owner can pay any time up until February 1 of the first year that will give him/her at least 180 days to pay. The Cy Fair units' bills were sent in the spring of 2014, so SPX had until February 1, 2015 to pay. Its payment in December of 2014 was timely. The payment issue was not an obstacle to SPX's protest or its appeal. The payment deadline prescribed by §41.4115 for failure-to-deliver protests did not apply because it is based on an ARB

finding about when the property owner first received notice of the taxes, and, in this case, the ARB had not made any such finding.

The court next explained that the district's notice to SPX saying that it had filed a §25.25 motion with the ARB was not legally significant. It did not tell SPX that the district was changing the appraisal rolls or taking any action adverse to SPX. It merely stated that the district was asking the ARB to do something. It did not notify SPX that the rolls were actually being changed, not did it start the clock on SPX's opportunity to protest. The clock did not start until the Cy Fair units sent their tax bills, so SPX's protest was timely. SPX's failure-to-deliver protest was sound because the district's notice did not notify SPX that the district and the ARB were actually changing the records. The court further explained that the requested changes in the appraisal rolls should have required an ARB hearing with advance notice to SPX. Neither the district nor the ARB had the authority to make changes without a hearing. 2010 was the only year for which the ARB conduced a hearing on the district's motion, and that hearing occurred after the district had already changed the appraisal roll.

The court also explained that facts of the case did not support changes to the appraisal rolls under §25.25(c)(3) because SPX's property did actually exist at the address stated on the appraisal rolls. This was not a case of property being moved from one place to another.

SPX was not entitled to remedies other than those set out in the Tax Code. It could not get an injunction, a writ of mandamus, etc. And it could not sue the chief appraiser or the ARB. It could, however, pursue its suit against the district. It could not sue for 2013 because it failed to appear for the ARB hearing. The court of appeals sent the case back to the trial court for further consideration of the years 2010-2012.

Hood County Appraisal District v. Mandy Ann Management Ltd.
2020 WL 6601595 (Tex. App. – Fort Worth, November 12, 2010, no pet.) (not reported.

Issues: Open space agricultural appraisal

Mandy Ann Management owned a tract of about 680 acres of land. The land had been appraised as open-space agricultural (1-d-1) land for several years when the appraisal district determined that 240 acres of it had changed use. Following an unsuccessful protest, Mandy sued the district. A jury decided for Mandy and the trial court ordered the district to maintain the 1-d-1 appraisal. The district appealed arguing that the evidence did not support the jury's verdict.

Convincing a court of appeals that a jury was wrong is a difficult job. Appellate courts are generally very respectful of jury verdicts. The court of appeals upheld this jury's verdict for Mandy. The court's lengthy opinion deals with the evidence specific to this case rather

than the interpretation of law, so it is not an especially useful precedent. Generally, Mandy's evidence indicated that a neighbor's cattle--the opinion calls them cows—had access to Mandy's land including the 240 acres in question for about four months each year. Nobody kept track of how many cattle were there. The court was not bothered by the fact that Mandy's land had sometimes been used recreationally by off-road vehicles as part of an "off-road amusement park" nor by the fact that a quarry operated on a separately appraised (but not separately fenced) part of Mandy's land. The court found that the evidence was legally and factually sufficient to support the jury's verdict.

Dallas Central Appraisal District v. City of Dallas
2020 WL 6334805 (Tex. App. – Dallas, October 29, 2020, pet. denied) (not reported)

Issues: Public Property Exemption

The city leased a building from Mockingbird Partners and used the building in connection with public transportation. The lease called for the city to pay the taxes on the building. The city argued that the building should be exempted from taxation as public property used for public purposes. When the district denied the exemption, the city filed an unsuccessful protest with the ARB and then sued the district. Both sides filed motions for summary judgment. The trial court granted the city's motion, and the district appealed.

The court of appeals reversed the trial court and granted summary judgment for the district. The court of appeals explained that Art. VIII, §1 of the Texas Constitution and §11.11 of the Tax Code require that a property be owned by the state or a local government in order for it to qualify for exemption. The building was not exempt because the city did not hold legal or equitable title to it.

Fort Bend Central Appraisal District v. McGee Chapel Baptist Church
611 S.W.3d 443 (Tex. App. – Houston [14th Dist.], October 15, 2020, no pet.)

Issues; Exhaustion of remedies; failure-to-deliver-notice protests

The appraisal district retroactively cancelled McGee's exemption and McGee filed a protest with the ARB (the "exemption protest"). The ARB scheduled a hearing, but McGee failed to appear. The ARB *dismissed* the exemption protest without considering its merits. Then McGee filed a protest under §41.411 of the Tax Code alleging that the ARB had not delivered notice of the hearing (the §41.411 protest). The ARB scheduled that protest for a hearing, McGee appeared, and the ARB *denied* that protest, finding that the notice had been properly sent. McGee sued the district over both protests. The district argued that McGee's claims concerning both protests should be dismissed because: 1) the ARB had not heard the exemption protest; and 2) McGee should have sued the ARB in connection with the §41.411 protest. The trial court refused to dismiss the case, and the district appealed.

The court of appeals ruled that McGee's claims concerning the exemption protest should be dismissed. McGee did not exhaust the administrative remedies available before the ARB, so the trial court had no jurisdiction over the exemption claims. But the §41.411 protest was another matter. McGee did appear for the ARB's hearing on that protest, and the ARB did issue an appealable order determining that protest. Under §42.21, the district was the proper defendant in that suit. The trial court correctly refused to dismiss the case insofar as it applied to the §41.411 protest. The court of appeals noted that an ARB can be sued if it refuses to hear a property owner's protest. In this case, however, the ARB tried to hear the exemption protest, but McGee didn't appear.

Harris County Appraisal District v. IQ Life Sciences Corp.
612 S.W.3d 93 (Tex. App. – Houston [14th Dist.], October 13, 2020, pet. denied)

Issues: Section 25.25 motions; failure-to-deliver-notice protests

IQ did not protest the appraisals of its bpp in 1013, 2014, or 2015. It paid each year's tax assessments in full and on time. In August of 2017, it filed §25.25(d) motions and failure-to-deliver-notice (§41.411) protests with the ARB for each of those three years. It alleged that the appraisal district had not sent notices of appraised value in any of those years. It also claimed that the taxing units had not sent tax bills. The ARB dismissed IQ's motions and protests because they were not filed timely. IQ then sued the district asserting the same claims under §25.25(d) and 41.411. The district asked the court to dismiss the case because IQ has not acted in time to assert its claims. When the trial court refused to dismiss the case, the district appealed.

The court of appeals ruled for the district and dismissed the case. The court explained that the filing deadlines for §25.25(d) motions and for §41.411 protests are both tied to the date that taxes become delinquent. The deadlines apply even if the property owner pays the taxes before they become delinquent. A §41.411 protest may be filed after the usual February 1 deadline if the property owner shows that no taxing unit delivered a tax bill. In this case, however, IQ's timely payments proved that it had actual knowledge of the tax assessments in time to pay them before February 1. The deadlines for filing §41.411 protests were not extended. Thus, IQ's motions and protests were filed too late, and the ARB was right when it dismissed them.

One judge wrote a lengthy and shrill dissent. She argued that when taxes are paid timely, there is no delinquency date and there is no deadline at all for a property owner fling a §41.411 protest or a §25.25(d) motion.

In Re APTWT, LLC
612 S.W.3d 85 (Tex. App. – Houston [14th Dist.], October 13, 2020, original proceeding)

Issues: Unequal appraisal; discovery

Following an unsuccessful protest, APTWT sued the appraisal district alleging that the appraised value of its apartment complex was greater than the median appraised value of a reasonable number of comparable properties appropriately adjusted. The district began pretrial discovery, seeking, among other things, the price that APTWT had recently paid for the complex and a recent appraisal of the complex. APTAT was bent on concealing that information and resisted the district's discovery. The trial court ruled that APTWT had to provide the requested items. APTWT then sought a writ of mandamus from the court of appeals.

The higher court sided with APTWT. The court's opinion states that a property's market value is irrelevant in an unequal-appraisal case comparing its appraised value with the appraised values of other properties. Any discovery related to market value must be narrowly tailored to information that is relevant to the selection of comparable properties and the application of appropriate adjustments to those properties. The district could not discover the purchase price or the value determined in APTWT's appraisal. The trial judge had abused her discretion by allowing that discovery. The court of appeals ordered her to vacate her order.

Mitchell v. Map Resources, Inc.
615 S.W.3d 212 (Tex. App – El Paso, September 29, 2020, no pet. hist.)

Issues: Service of process; collateral attacks on judgments

In 1998, taxing units filed a huge delinquent tax suit involving more than 1,200 properties. The lawyer filed an affidavit with the court and sought permission to serve defendants by posting a notice at the courthouse pursuant to Rule 117a of the Texas Rules of Civil Procedure. The affidavit did not discuss the particulars related to each property. Instead, it generally stated that the owners of the properties were unknown or that they could not be located or that efforts to serve them personally had failed. The court allowed the citation by posting and appointed an attorney ad litem. In a 1999 trial, the judge signed a statement of evidence, which summarized testimony from the taxing units' lawyer. The statement of evidence did not recite particulars. It generally said that the lawyer had made a diligent search for the defendants cited by posting, including a search of public records. If a defendant's address was found, personal service was attempted, but it had failed. The lawyer had also attempted to contact anybody in possession of a property and anybody in the community who might know how to find an owner. The entered judgment for the taxing units and ordered that the properties be sold.

One owner whose mineral interest was sold was Elizabeth Mitchell. She had been served by posting and did not appear for the trial. Her property was sold to a company that later resold it to Map Resources. She died in 2009. In 2015, her heirs sued to claim the

property. They argued that the sale was void because Mitchell had not been properly served in the delinquent-tax suit. Serving her by posting had violated her constitutional right to due process of law. The trial court entered summary judgment for MAP, and the heirs appealed.

The court of appeals affirmed the summary judgment. The court explained that a complete failure to serve a defendant in a lawsuit may open the door to a collateral attack on the judgement even many years later. The heirs argued that the county deed records included 1983 deeds to Mitchell with her P.O. box address on them. If the taxing unit's lawyer had really made a diligent search of public records, he would have found her address and served her personally. The court of appeals rejected that argument for several reasons. In a collateral attack on a past judgment, a court can consider only the official record from the earlier trial. Extrinsic evidence, not in the record may not be considered. The 1983 deeds were not in the record of the 1999 delinquent-tax trial, so they could not be considered in the heirs' new suit. Even if the deeds could be considered, there was no evidence that the P.O. box was still a good address for Mitchell in 1999. The lawyer's affidavit and the statement of evidence from the first case indicated generally that the taxing units had tried to personally serve defendants who could be found through public records, even though the record contained no individual citations to Mitchell or any other defendant.

One judge wrote separately to suggest a change in the rule that prohibits consideration of extrinsic evidence. Another judge dissented because she was troubled by some items in the record from the delinquent-tax case.

Peters v. Texas
2020 WL 5017767 (S.D. Tex., August 25, 2020)

Issues: Federal Courts

Peters was an inmate in a state prison. Taxing units filed a suit in state court to collect delinquent taxes on property that Peters claimed to own. He filed suit in federal court against the state, the taxing units and their law firm, alleging a conspiracy to steal his property. In this opinion the federal district court dismissed the suit. The court relied on the Tax Injunction Act (28 U.S.C. §1341), the federal statute that generally denies federal courts jurisdiction to hear cases that might interfere with the assessment and collection of state and local taxes. A federal court cannot hear a claim as long as state courts can provide a "plain, speedy, and efficient remedy." Courts have repeatedly held that such a remedy is available from Texas courts under the Tax Code.

Hammons v. Dallas County
2020 WL 4640313 (5th Cir, August 11, 2010)

Issues: Federal courts

Hammonds filed a federal lawsuit to challenge the tax sale of his property. The federal trial court dismissed the case, and Hammons appealed. In this opinion, the court of appeals affirmed the dismissal. The higher court relied on the Tax Injunction Act (28 U.S.C. §1341), the same federal statute described in the summary above.

Hutchins v County of Llano
2020 WL 4289383 (W.D. Tex., July 27, 2020)

Issues: Federal courts; judicial immunity

Taxing units sued Hutchins in state court for delinquent taxes. The taxing units prevailed, and Hutchins's property was sold at a tax sale. He later filed suit in federal court naming everyone remotely connected to the assessment and collection of the taxes, including the appraisal district, the taxing units, and the judge of the state court. He asserted a wide variety of claims including civil rights claims and RICO claims. The defendants all moved to have the federal case dismissed. The judge referred the matter to a magistrate, who wrote this opinion.

The magistrate first discussed the principle of judicial immunity. With very few exceptions, a judge may not be sued over anything done in his/her judicial capacity, even if the judge acts corruptly or maliciously. The state-court judge was clearly acting in his judicial capacity when he handled the delinquent-tax suit. And a state district court is not a legal entity that can be sued separately from the judge.

The magistrate next discussed the Tax Injunction Act. That stature prevented the federal court from considering Hutchins's claims. Another rule called the "Rooker-Feldman Doctrine" generally holds that judgments of state courts may not be appealed to federal courts other than the Supreme Court. That includes issues that are inextricably intertwined with the state court's judgement. The magistrate concluded that Hutchins's suit should be dismissed.

In re Lewoczko
2020 WL 4354942 (Tex. App. – Beaumont, July 30, 2020, mandamus denied by Supreme Court) (not reported)

Issues: ARB eligibility; removal of ARB members

Lewoczko and Fahrenthold were members of the ARB, and they were married to each other. Their terms were scheduled run through 2020. In 2019 the legislature amended §6.412 of the Tax Code to prevent close relatives from simultaneously serving on the same ARB. That amendment took effect on September 1, 2019, but it included a savings clause saying that it did not affect the eligibility of existing ARB members to complete their

terms. Nevertheless, the local administrative district judge (ladj) removed both members from the ARB in April of 2020 on the grounds that they were married. The ladj did not give the members any type of hearing or even tell them that he was thinking about removing them. He just telephoned Fahrenthold and asked her to confirm that the two were married. When she did, he ended the call and then issued his order. The members then sought relief from the court of appeals in the form of a writ of mandamus.

The higher court explained that it had the authority to issue a writ of mandamus overturning an order of a local administrative district judge even though the order was not issued in the context of a lawsuit. Next, the court concluded that although the amendment to §6.412 did not require the ladj to remove the members, it gave him the discretion to remove them if he wanted to, even before their terms expired. Finally, the court addressed the members' due-process rights. It concluded that Fahrenthold's rights were protected by the ladj's telephone call to her. Because Lewoczko was removed without even a telephone call, however, his rights were not protected. The court of appeals upheld the removal of Fahrenthold but ordered the ladj to reverse his order removing Lewoczko.

Hutchings v. County of Llano
2020 WL 4289383 (W.D. Tex., July 27, 2020)

Issues: Federal courts

Hutchings lost property through a delinquent-tax suit in state court. He then filed a federal lawsuit against virtually everybody connected with the state-court case, the taxing units, the appraisal district, the state judge, the sheriff, etc. The defendants sought the dismissal of the case. Their motions were referred to a magistrate who wrote this opinion recommending that the federal district court dismiss the case.

The magistrate recognized that the state judge was protected by the rule of absolute judicial immunity. A judge cannot be sued based on any judicial action unless the judge acts in the complete absence of all jurisdiction. The federal court could not consider Hutchings's other claims because of the federal Tax Injunction Act, 28 U.S.C. §1341. That statute generally deprives federal courts of jurisdiction to interfere with the assessment or collection of state and local taxes. Another obstacle was the Rooker-Feldman Doctrine, which generally prohibits federal courts (other than the Supreme Court) from reviewing decisions of state courts.

Linebarger, Goggan, Blair & Sampson, LLP v. Tinstar Title, Inc.
2020 WL 4103152 (Tex. App. – Dallas, July 16, 2020, pet. denied) (not reported)

Issues: Governmental immunity; Interlocutory appeals

Linebarger contacted with Dallas County to collect the county's delinquent taxes. The contract called for Linebarger to do title searches on properties with delinquent taxes and allowed the firm to contract that job out to a title company. Linebarger contracted with Tinstar, but disputes arose between them. Tinstar sued Linebarger alleging that the firm

was preventing Tinstar from getting paid for its work. Linebarger responded that it was immune from the suit and moved for dismissal. When the trial court decided against dismissing the case, Linebarger went to the court of appeals with an interlocutory appeal and a petition for a writ of mandamus.

The court of appeals explained that 51.014 of the Civil Practice and Remedies Code allows an interlocutory appeal by a "governmental unit" when a trial court denies the unit's plea to the jurisdiction. The court concluded, however that Linebarger was not a governmental unit. Its dispute with Tinstar was a dispute between two private parties (unlike a case in which Linebarger might represent the County in a dispute with a taxpayer). The court dismissed the interlocutory appeal.

Linebarger could proceed with its mandamus claim alleging that the trial judge had abused her discretion when she did not dismiss the case. But the higher court rejected Linebarger's claim that it was immune from the suit. Governmental immunity may protect a private party if that party is following instructions from a governmental entity. The county, however, had no right to control Linebarger's selection of a title company or the firm's dealings with that company. This was not a case of the county acting through the firm.

Another issue concerned the fact that some of Tinstar's work had been done in connection with delinquent-tax suits that were still pending. Linebarger argued that Tinstar's claims were not ripe. The court of appeals rejected that argument. The pendency of the delinquent-tax cases might affect the calculation of any damages awarded to Tinstar, but it did not mean that the suit against Linebarger was not ripe.

Heidelberg v. DOH Oil Company
2020 WL 3025919 (Tex. App. – Eastland, June 4, 2020, no pet. hist.) (not reported)

Issues: Challenge to tax sale

Moore acquired a royalty interest in 1931. By 2009, the taxes on the interest were not being paid. Moore was dead, and taxing units were not able to determine who owned the interest. They filed suit against "unknown owners" and served those unnamed defendants by posting. No owners appeared, and the court ordered the interest sold. DOH bought it at the tax sale and recorded its deed on September 18, 2013. The operator subsequently discovered some possible heirs of Moore who claimed that they, not DOH, were entitled to the royalties. In 2016, the operator filed an interpleader suit against DOH and the heirs to force them to litigate their competing claims to the interest. The heirs claimed that the tax sale to DOH was void because they were not notified about it. DOH argued that even if the taxing units were careless in finding and serving the heirs, the tax sale could not be challenged more than one year after the deed was filed. The trial court entered summary judgment for DOH, and the heirs appealed.

The court of appeals affirmed the judgment for DOH. The higher court assumed that the delinquent-tax suit had violated the heirs' due process rights. But that did not excuse their delay in challenging the tax sale. The court noted that under §34.54(b) of the Tax Code,

the one-year limitations period does not apply to someone who was not served in the delinquent-tax suit and who pays the taxes during the limitations period and until the person files suit to challenge the tax sale. If the heirs had paid the taxes diligently, they would have preserved their right to challenge the tax sale, but they did not pay. Their due process claims were subject to the one-year limitations period, and they lost their right to challenge DOH's title to the interest when they did not act within one year.

Hammons v. Dallas County
2020 WL 2135855 (Tex. App. – Dallas, May 11, 2020, no pet.) (not reported)

Issues: Excess proceeds following tax sale

In May of 2017, the trial court entered a default judgment against Hammons for delinquent taxes for the years 2014-2016. The tax sale in May of 2018 resulted in about $115,000 of excess proceeds. The taxing units filed a petition seeking enough of the excess proceeds to pay the 2017 taxes on the property plus the accrued penalties and interest, about $5,400. Hammons also sought the excess proceeds. The trial court awarded the taxing units what they claimed and awarded the rest to Hammons. He appealed the award to the taxing units.

The court of appeals affirmed the trial court. The higher court explained that §34.04 of the Tax Code allowed the taxing units to claim excess proceeds to pay taxes, penalties, and interest that became due or delinquent after the delinquent-tax judgement or that were accidently omitted from the judgment. Their claim to the excess proceeds had a higher priority than the claim of the former owner, Hammons.

Dallas Central Appraisal District v. National Carriers, Inc.
2020 WL 2124178 (Tex. App. – Dallas, May 5, 2020, no pet.) (not reported)

Issues: Taxable situs

National was the parent corporation of NCI. Both were based in Kansas. NCI owned 430 trucks and leased them to National. Although the trucks were registered in Kansas, National often used them in several states, including Texas. National owned a facility in Dallas County where there were usually ten to twenty trucks present. But no truck stayed there for more than a day or two at a time. The Appraisal district appraised the trucks, and NCI filed a protest. After losing before the ARB, NCI sued the district. The trial court ruled for NCI, and the district appealed.

The court of appeals affirmed the trial court's judgment. The court of appeals skipped right over the question of whether the trucks were taxable in Texas at all and went straight to the question of whether they were taxable in Dallas County. The court applied the four-part test set out in §21.02 of the Tax Code and said that the evidence supported conclusions that: 1) no truck was in Dallas county for more than a temporary period; 2) no truck was normally located in Dallas County; 3) no truck was normally returned to Dallas County between uses elsewhere; and 4) Dallas County was not NCI's principal

place of business. The evidence was sufficient to rebut any presumption that the trucks were taxable in the county. The court focused on the individual trucks rather than focusing on the fleet, which had a continuous presence in the county. It also refused to consider the connections between the lessee and the county. Although the two corporations were related, they were distinct legal entities.

Editor's Comment: This is a very unusual opinion. In a case like this, a court would normally start with the question of whether the trucks were taxable in Texas at all. If it determined that the fleet (or some allocable portion of the fleet) was taxable in Texas, the court would then move on to identifying the particular Texas county with the strongest claim to the taxes on the property. This opinion ignores those crucial questions.

Baldwin v. Harris County
2020 WL 2026366 (Tex, App. – Houston [1st Dist.], April 28, 2020, no pet.) (not reported)

Issues: Excess proceeds following tax sale

Following the trial court's judgment in a delinquent-tax case, a tax sale resulted in excess proceeds. Soon after the sale, Baldwin petitioned the trial court for the release of the money. The court denied her claim approximately one year after the tax sale. Baldwin attempted to appeal the courts decision. The county argued that the decision was not appealable.

The court of appeals agreed with the county and dismissed the appeal. The higher court explained that a trial court's order generally is not appealable unless it is a final judgment. There are two exceptions. A decision may be appealed if a statute allows the appeal. Section 34.04 of the Tax Code allows an appeal from an order releasing excess proceeds but not an order *denying* a claim for excess proceeds. An order may be appealed if it functions as a mandatory injunction resolving property rights. If a trial court denies a petition for excess proceeds more than two years after the tax sale, when it is too late for anyone else to fie a petition, that decision effectively determines who gets the money. It can be appealed. In this case, however, the trial court denied Baldwin's petition only one year after the sale. There was still time for other claimants to petition the court. The trial court's order could not be appealed.

Z Bar A Ranch LP v. Tax Appraisal District of Bell County
2020 WL 1932908 (Tex. App. – Austin, April 22, 2010, no pet.) (not reported)

Issues: Exhausting administrative remedies

Z.Bar bought open-space agricultural land in 2014. It wasn't clear whether Z Bar applied for agricultural appraisal in 2015, but the appraisal district did not give the land an agricultural appraisal. Z Bar did not file a protest until October of 2015. Then it filed a notice of protest claiming that the appraisal district had not sent a 2015 notice of appraised value and that the district had improperly failed to grant an agricultural appraisal for that year. At an ARB hearing in February of 2016, the district's appraiser testified that Z.Bar

had not applied for the ag appraisal in 2015, and one of Z.Bar's owners admitted that the district was right. The ARB voted to deny the ag appraisal. Z.Bar then sued the district, this time alleging that it had filed a timely ag-appraisal application but that the district had failed to send a notice that the application was denied. The district moved to dismiss because Z.Bar had not raised its claim about the application before the ARB. At trial, Z Bar's owners testified that they had filed timely ag-appraisal applications for 2015. The trial court did not dismiss the case but entered a judgement against Z.Bar. Z Bar appealed.

The court of appeals ruled that the case should have been dismissed. Z.Bar had not exhausted the administrative process or the remedies that might have been provided by the ARB. A property owner may not raise claims in court that were not raised before the ARB. The claim that Z Bar raised in court, i.e., that it had filed a timely application, had not been raised before the ARB. The court of appeals vacated the trial court's judgment and dismissed the case.

Amreit SSPF Preston Towne Crossing LP v. Collin Central Appraisal District
2020 WL 1921685 (Tex. App. – Dallas, April 21, 2020, no pet.) (not reported)

Issues: Exhausting administrative remedies

Amreit filed an unequal-appraisal protest, which was denied by the ARB. Amreit then sued the appraisal district. In a pre-trial hearing, the district's lawyer stipulated that Amreit had exhausted its administrative remedies before the ARB. Amreit's expert concluded that the district was wrong about the property's net rentable area. He did his unequal-appraisal analysis using a different size for Amreit's property. The district objected, claiming that the size dispute was a separate issue, one that had not been presented to the ARB. Amareit presented some evidence that the expert's size adjustments had been presented to the ARB, but neither side introduced the actual ARB hearing record. The trial court ruled for the district and dismissed the case. Amreit appealed.

The court of appeals reversed the trial court and reinstated the case. The higher court concluded that the size dispute *had been* raised and decided at the ARB level. It could therefore be raised in court. It is not clear whether the court of appeals was saying that the size issue was subsumed within the broader unequal-appraisal claim or that it really was a distinct issue that was decided by the ARB. Each interpretation is supported by parts of the court's opinion.

Curtis v. Wilson
2020 WL 1909987 (Tex. App. – Dallas, April 20, 2020, no pet.) (not reported)

Issues: Exhausting administrative remedies

Wilson sued the chief appraiser alleging that the appraisal district's 2019 appraisals were unequal and did not take the individual characteristics of properties into account. He never filed a protest or took his claims to the ARB. He sought a declaratory judgement to the

effect that the 2019 appraisals violated the Tax Code and the Constitution and an injunction requiring the district to redo the appraisals. The chief appraiser asked the trial court to dismiss the case. When the court refused, the chief appraiser appealed.

The court of appeals ruled that Wilson could pursue his claim for a declaratory judgment. The court concluded that a taxpayer may seek a declaratory judgement from a trial court without first taking his claims to an ARB. The chief appraiser was not immune from the suit because an official may be sued when she is alleged to have acted *ultra vires*, i.e., without any legal authority. A chief appraiser has no legal authority to appraise property for taxation. Wilson, however, could not sue for an injunction to make the district change its appraisals. The court of appeals dismissed his claim for an injunction but sent his claim for a declaratory judgment back to the trial court. The trial court could rule that the 2019 appraisals violated the law, but it could not order any changes.

In re Mooney
2020 WL 1884445 (Bankr. N.D. Texas, April 15, 2020)

Issues: Tax Sales, Bankruptcy

Under some circumstances, §548 of the Bankruptcy Code allows a bankruptcy court to reach back and undo a transfer of property from the debtor to another party before the bankruptcy petition was filed. The idea is to prevent someone from fraudulently transferring his assets so that his creditors cannot get them. A transfer can be avoided if the debtor was insolvent and received "less than a reasonably equivalent value in exchange for such transfer." In this case, the debtor tried to use this law to undo a tax sale. Tax liens on the debtor's homestead had been sold to a property tax lender who then filed suit to foreclose those liens. The price received in the tax sale was well below the value of the property as stated in the delinquent-tax judgment.

The bankruptcy court concluded that §548 did not apply to a tax sale as long as all state-law requirements for the sale were satisfied and there was no collusion involved. Under Texas law, tax sales are public and governed by competitive bidding procedures. Thus, the price received is "reasonably equivalent value." The bankruptcy court ruled that it could not undo the tax sale.

In Re Kinder Morgan Production Co., LLC
2020 WL 1467281 (Tex. App. – Eastland, March 26, 2020, original proceeding) (not reported)

Issues: Appeals of challenges; Texas Citizens Participation Act

Kinder Morgan's minerals in Scurry County were involved in several ARB proceedings. Several taxing units filed a challenge claiming that the values should be higher. Kinder Morgan filed a protest claiming that the values should be lower. The ARB denied the challenge and the protest. The taxing units and Kinder Morgan appealed in separate lawsuits filed in the same trial court. Kinder Morgan sought the dismissal of the Taxing

units' suit based on the Texas Citizens Participation Act (TCPA). The appraisal district filed a motion in the trial court seeking the consolidation of the cases. In a hearing, the trial judge denied Kinder Morgan's motion to dismiss. He verbally ruled that the cases would not be consolidated but that discovery would be conducted jointly. He asked the district's lawyer to prepare a written order. Kinder Morgan promptly appealed the judge's decision not to dismiss the taxing units' claims. Then, in another hearing a few months later, the judge considered a proposed order requiring consolidated discovery in the cases. Kinder Morgan objected on the grounds that discovery in the challenge lawsuit was stayed while it appealed the trial judge's decision not to dismiss the case. The judge signed the order over Kinder Morgan's objections, and Kinder Morgan sought a writ of Mandamus from the court of appeals.

The court of appeals sided with Kinder Morgan and ruled that a writ of mandamus was in order unless the trial judge withdrew his order. The TCPA, explained the court, imposes a mandatory stay on all proceedings when an appeal is taken from a trial court's denial of a motion to dismiss a case. Discovery and all other proceedings are stayed automatically until the appeal is resolved. A trial judge abuses his discretion when he conducts hearings and signs orders in violation of the stay. The judge may not sign an order even if it reflects a verbal order that he gave before the appeal was taken. He could have signed an order that allowed discovery in the protest suit but he could not allow discovery in the challenge suit.

Allen v. Jungenberg
2020 WL 1467368 (Tex. App. – Houston [14th Dist.], March 26, 2020, pet. denied) (not reported)

Issues: Tax sales

Allen sued Jungenberg over the title to real property. Jungenburg claimed that she owned the property as the result of a court-ordered tax sale and that Allen's suit was filed too late to challenge that sale. (Section 33.54 of the Tax Code says that a suit must be filed within one year after the purchaser records the deed.) Jungenberg filed a motion for summary judgment, and her evidence included a copy of her deed. The trial court granted the motion and entered judgment for Jungenberg. Allen appealed.

The court of appeals affirmed the trial court. The higher court ruled that Jungenberg's summary judgment evidence was sufficient without a copy of the delinquent-tax judgment or order of sale.

On appeal, Allen tried to claim that she had not been given sufficient notice of the delinquent-tax suit. The court of appeals declined to consider that claim because Allen had not raised it in the trial court and because she provided no evidence to support it.

McKinney Millennium, LP v. Collin Central Appraisal District
599 S.W.3d 57 (Tex. App—Dallas, March 9, 2020, pet.denied)

Issues: Agricultural rollback taxes; attorneys' fees in appeals

McKinney purchased agricultural land in early 2014 and changed its use later that year. The land was appraised and taxed as agricultural land in 2014. In early 2015, the appraisal district made a change-of-use determination and retroactively cancelled the agricultural appraisal of the land for 2014. McKinney protested the cancellation of the agricultural appraisal for 2014, although it admitted that the land's use had changed in 2014. The ARB ruled for McKinney, and the appraisal district sued McKinney to appeal the ARB's order. McKinney filed a counterclaim against the district. The trial court entered a summary judgment for the district, and McKinney appealed.

The court of appeals reversed the trial court and entered judgment for McKinney. When agricultural land changes use, the Tax Code imposes a rollback tax recapturing the tax savings for the years before the change. The Code, however, does not say what happens to the agricultural appraisal for the year in which the use changes. The Comptroller's *Manual for the Appraisal of Agricultural Land* said that the land should not receive the benefit in that year. The district relied on the manual. The court of appeals, however, ruled that the Comptroller did not have the authority to decide that question or adopt that rule. The district was wrong to cancel the agricultural appraisal for 2014.

McKinney claimed that it should recover its attorneys' fees. The court of appeals disagreed. The court explained that a property owner who prevails in a lawsuit alleging an erroneous or unequal value can recover attorneys' fees under §42.09 of the Code. But this was not a suit about value; it was a suit about whether McKinney's land qualified as agricultural land.

PRSI Trading, LLC v. Harris County
2020 WL 960982 (Tex., February 28, 2020)

Issues: Foreign Trade Zones

In the mid 1990's, the Foreign Trade Zone Board created a subzone under the authority of the Port of Houston Authority. The subzone contained a refinery, and the owner of the refinery was named as the operator. In 2005, the refinery was sold and the new owner, Pasadena-DE was approved by Customs and Border Protection as the new operator. In 2006, Pasadena-DE merged with another corporation, Pasadena as part of a complicated multi-company merger. Pasadena applied to the CBP to be named as the new operator. That required the approval of the Port, but the Port refused to approve it unless Pasadena agreed to give up its property tax exemption for personal property in the subzone. For about seven years, the subzone continued to exist with Pasadena serving as a de facto operator, even though it was never formally approved by the CPB. CPB issued regular monthly extensions allowing Pasadena to operate the subzone. CPB dealt with Pasadena and did not take steps to deactivate or suspend the subzone. In 2013, the Port asked CPB to deactivate the zone, which it did a few months later.

The county contended that by 2011, the subzone had been implicitly deactivated and that the personal property there was taxable for 2011 and subsequent years. After an unsuccessful challenge before the ARB, the county filed suit. The county lost in the trial court but won in the court of appeals. Then the Supreme Court agreed to consider the case.

The Supreme court reversed the court of appeals and ruled against the county. The high Court ruled that the subzone was active during the years in question notwithstanding the fact that Pasadena was never approved as operator. Even though it was never approved, Pasadena had remained "provisionally responsible" for the subzone until it was formally deactivated. Thus, the personal property in the subzone continued to be exempt from taxation.

Harris County Appraisal District v. American Multi-Cinema, Inc.
2020 WL 930834 (Tex. App. – Houston [1st Dist.], February 27, 2020, no pet.) (not reported)

Issues: Attorneys' fees in appeals

AMC protested the values of two movie theaters but was not happy with the ARB's rulings. It filed suit against the appraisal district. When the case was tried without a jury, the trial judge actually raised the value of one theater by about $1 million, but she lowered the value of the other theater by about $2 million, a net reduction of about $1 million. AMC asked for its attorneys' fees under §42.29 of the Tax Code. It had spent over $125,000 on attorneys' fees. The trial judge awarded it $15,000, the maximum amount allowed by §42.29(a). The judge read §42.29 as being mandatory and as requiring her to award AMC its attorneys' fees. The appraisal district appealed.

On appeal, the parties' principal disagreement was over whether §42.29 requires a trial court to award attorneys' fees to a property owner or whether it gives the trial court discretion to decide. The court of appeals noted that other courts of appeals had given conflicting answers to that question. This court, however, concluded that it did not need to answer the question in this case. Even if the statute did not *require* the trial court to award attorneys' fees to AMC, it nevertheless *allowed* the trial court to award those fees. The award of $15,000 to AMC, if not mandatory, was a reasonable exercise of the trial court's discretion. The court of appeals, therefore, affirmed the trial court's judgment.

Galvan v. Carvalho
2020 WL 806649 (Tex. App. – San Antonio, February 19, 2020, no pet.) (not reported)

Issues: Tax sales

In 1979, the owner of a small tract of land conveyed to Gilpin an easement to come and go across the tract. In 1996, taxing units sued Gilpin for delinquent taxes on land including the small tract. The trial court entered judgment for the taxing units, and the judgment recited that Gilpin was the owner of the small tract. The tract was sold at a tax sale, and

the purchaser late sold it to Galvan. The title of the tract became the subject of a suit between Galvan and Carvalho, Galvan claiming that he owned the tract as a result of the tax sale. The trial court entered summary judgment for Carvalho, and Galvan appealed.

The court of appeals affirmed the judgment for Carvalho. The higher court explained that the tax sale conveyed only the interest that Gilpin actually had in the tract and nothing more. The delinquent-tax judgment was based on the appraisal records, "which do not establish title to the property but only indicate whom the appraisal district believes the owner to be." When a delinquent-tax suit leads to a tax sale, the sheriff's deed conveys only the interest that the defendant had in the property. The interests of other owners are not affected. Gilpin had only an easement, and the tax sale could not convey anything more.

Larkins-Ruby v. Sealy Independent School District
2020 WL 717548 (Tex. App. – Houston [1st Dist.], February 13, 2020, pet. denied) (not reported)

Issues: Delinquent tax suits

Taxing Units sued Larkins-Ruby for delinquent taxes on her real property. At trial, the taxing units introduced certified copies of their delinquent tax records. Larkins-Ruby introduced records concerning her name change and parts of a book about written instruments. She argued that the taxing units had no authority to tax her property because her title could be traced to an old patent from the State of Texas. The trial court entered judgment for the Taxing units, and Larkins-Ruby appealed.

The court of appeals affirmed the judgment for the taxing units. The higher court explained that under §33.41 of the Tax Code, a taxing unit makes a prima facie case for recovering delinquent taxes when it introduces certified copies of the delinquent tax records. The burden of proof then shifts to the property owner to prove some defense to the claim. Larkins-Ruby's documents did not prove any defense. The court further explained that subject only to federal limitations, the State of Texas, acting through its political subdivisions, has the power to tax any real and tangible personal private property in the state. The taxing units had the authority to tax Larkins-Ruby's property.

El Paso County v. El Paso County Emergence Services District No. 1
622 S.W.3d 25 (Tex. App. – El Paso, January 8, 2020, no pet.)

Issues: Governmental immunity; adopting tax rate

A special subchapter in the Health and Safety Code applies to only emergency services districts in El Paso County. Under the law, an ESD proposes a budget and a tax rate, but they don't take effect unless that are approved by the commissioners' court. In 2016 an ESD proposed a tax rate that was not approved by the commissioner's court. Under §26.05 of the Tax Code, the ESD was treated as a taxing unit that failed to adopt a tax rate on time. That meant that its taxes were based on its effective rate. The EST filed suit

to challenge the special law and sought a declaratory judgment. The county asserted various defenses, including mootness and governmental immunity. When the trial court refused to dismiss the case, the county appealed.

The court of appeals reversed the trial court's ruling and dismissed the case. The court of appeals first explained that even though the time had passed for doing anything about the 2016 tax rate, the case should not be dismissed as moot. What happened to the ESD was capable of repetition, but there would never be time to litigate a claim before it became moot. Therefore, it fell under an exception to the mootness rule.

The court next discussed governmental immunity. A party suing a governmental body must show that the body's immunity has been waived. The ESD, however did not plead or prove any waiver of the County's immunity. The statute governing declaratory judgements (Chapter 37 of the Civil Practice and Remedies Code) does not waive governmental immunity.

Additionally, the ESD lacked standing to assert that the special law was somehow unconstitutional because a local government does not have constitutional rights. A local government may sometimes challenge a law that it is responsible for implementing, but in this case, the county, not the ESD was the government responsible for implementing the law.

Attorney General's Opinions

Opinion No. KP-0329
August 25, 2019

Issues: Conflicts of interest.

Section 6.054 of the Tax Code says that an employee of an appraisal district may not also be an officer of a taxing unit served by the district. The AG was asked whether that law applied to member of a school district's board of trustees if the member did not also hold some special position on the board, such as its president or secretary. The AG explained that every member of the board of trustees is an officer of the school district. They exercise the sovereign authority of the school district independent of the control of others. Thus, a person could not simultaneously be a member of the school board and an employee of the appraisal district.

Opinion No. KP-0326
August 10, 2020

Issues: Cybersecurity training

The Information Resources Management Act (Chapter 2054 of the Government Code) requires the employees and elected officials of a local government to complete a

cybersecurity training program every year. The AG was asked whether this requirement applies to the directors of an appraisal district. He explained that an appraisal district is covered by the Act. The directors, however, are not elected officials. They are selected through a process that involves votes cast by taxing units, not through an election involving the general populace. Therefore, they do not have to complete the cybersecurity training.

Opinion No. KP-0307
May 8, 2020

Issues: ARB hearings

This opinion concerns some proposals considered by some appraisal districts and ARBs for conducting protest hearings during the coronavirus pandemic. The AG opined that an ARB could not force property owners who insist on having in-person hearings to have telephone or videoconference hearings instead. A videoconference hearing is not a form of in-person hearing.

Next the AG explained that an appraisal district may not merely post information about ARB hearing procedures on its website. The district must also publish a notice in a newspaper as required by §41.70 of the Tax Code and deliver a copy of the ARB's hearing procedures to each protesting property owner as required by §41.461.

Finally, the AG explained that the failure of an appraisal district or an ARB to deliver a notice to a property owner does not nullify the appraisal of the owner's property. There is one very narrow exception to this rule. If an ARB takes an action that will increase a property owner's tax liability, the ARB must notify the owner, or its action is a nullity. This rule would apply, for example, if the ARB sustains a taxing unit's challenge or acts on its own to cancel an exemption or special appraisal.

Editor's Comment: These days, courts at every level are using videoconferences. City councils, school boards and virtually every other type of local governmental body are meeting by telephone or videoconference. It seems strange to conclude that ARBs must have in-person hearings. Is an ARB really that much more important than, say, the Supreme Court of the United States?

Opinion No. KP-0300
April 22, 2020

Issues: Public comments at meetings

Section 551.007 now requires a governmental body to allow time at its meetings for public comments. A member of the public may address the body regarding any item on the agenda. In this opinion, the AG explained that the body may require that all public comments come at the beginning of the meeting. It does not have to allow a separate opportunity for comments on each separate agenda item. Further, the body may impose

a reasonable limit on a person's total time for commenting on multiple agenda items. The AG added, however, that the body's decision would be subject to judicial review.

Opinion No. KP-0299
April 13, 2020

Issues: Exemptions for properties damaged by disasters

Last year, the legislature enacted §11.35 of the Tax Code. That section provides for temporary exemptions for properties damaged in a disaster recognized in a declaration from the governor. The coronavirus pandemic led the governor to issue a disaster declaration encompassing the whole state. Many people are expecting that the pandemic and the harm that it does to the economy will lead to declining property values. The AG was asked whether a property with a reduced market value might be considered "damaged" for purposes of the new tax exemption. He explained that §11.35 contemplates actual physical damage to a property. It does not exempt purely economic, non-physical damage resulting from the pandemic.

Opinion No. KP-0287
January 21, 2020

Issues: CAD Board of Directors

In the 1980's, the Hood CAD adopted an alternative method of selecting its directors. Instead of having an election in which taxing units cast votes in proportion to their tax levied, the alternative plan gave every taxing unit its own seat on the district's board. The plan also staggered the terms of the directors. In 2007, the legislature enacted H.B. 1010, which made the boundaries of each appraisal district the same as the county's boundaries. A taxing unit with territory in two counties could no longer choose to have one appraisal district do all its appraising. H.B. 1010 included provisions realigning appraisal districts' boards of directors in light of the new boundaries.

The AG was asked how H.B. 1010 had affected the board of the Hood CAD and other districts with alternatives methods for selecting directors. He first opined that the bill had ended every director's term as of January 1, 2008. That meant that every seat on the board had a two-year term beginning January 1, 2008. Any staggered-term arrangement put in place before 2007 was ended my H.B. 1010. An appraisal district could have taken new action to create staggered terms, but the Wood CAD had not done that.

Next, the AG said that H.B. 1010 had effectively ended any alternative method for the selection of an appraisal district's directors that was in effect before the bill was enacted. The Hood CAD's one unit/one vote plan was automatically replaced with the standard statutory proportional-voting plan. Again, a district could have adopted an alternative plan after the enactment of H.B. 1010, but the Hood CAD had not done that.

In a footnote, the AG explained that the directors selected under the alternative plan that had actually been ended in 2007 were nevertheless de facto directors of the CAD. Actions that they had taken were not void or voidable.