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2023 PROPERTY TAX CASES
And Attorney General's Opinions

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Cases

Mansion Partners, LTD v. Harris County Appraisal District
2023 WL 8938405 (Tex. App. – Houston [1st Dist.], December 28, 2023, no pet. hist.) (not reported)

Issues: Appeal of ARB order; exhaustion of remedies

Mansion protested the appraisal of its property in 2019. After a hearing, the ARB denied the protest and sent an order to Mansion's agent. Mansion did nothing for three months. Then it filed a second protest. Mansion claimed that it had not filed a timely appeal because its agent had not let it know about the ARB order. It asked the ARB to issue a new order that would give it another opportunity to appeal. A few months later, the ARB dismissed the second protest for lack of jurisdiction. Mansion then sued the appraisal district and the ARB asking that the trial court order the ARB to issue a new order. In its petition, Mansion referred to the ARB's original order determining its protest and said that it "desired to file this appeal within the span of time which is permitted by the Texas Tax Code but did not do so." The district filed a plea to the jurisdiction based on Mansion's failure to file suit within the sixty days following the delivery of the ARB order. The trial court dismissed the case, and Mansion appealed.

The court of appeals affirmed the dismissal of the case. The higher court focused on the quoted language from Mansion's petition. Mansion has judicially admitted that its suit was not filed on time. The district did not need to provide any evidence to prove that fact.

Mansion also cited §42.231 of the Tax Code. That section concerns a property owner who appears in court without having exhausted his/her administrative remedies before the ARB. In some cases, a trial court could send the matter back to the ARB so that the owner could complete the ARB process. Mansion wanted its protest sent back to the ARB. The court of appeals, however, explained that §42.231 does not apply when a property owner gets an appealable ARB order but does not appeal it withing the sixty days allowed by law. A failure to appeal on time is different from a failure to exhaust administrative remedies from the ARB. The court added that an ARB does not have the authority to go back and issue a new order on a protest that it has already determined for the sole purpose of giving the property owner more time to appeal.

Nueces County v. San Patricio County
683 S.W.3d 559 (Tex. App. – Corpus Christi-Edinburg, December 28, 2023, no. pet. hist.)

Issues: Taxable situs of real property

This is the latest chapter in the long boundary dispute between Nueces County and San Patricio County. A 2003 judgement established a line generally running along the north shoreline of Nueces Bay and Corpus Christi Bay. San Patricio County was north of that line, and Nueces County was south. Controversies later arose about things like piers and docks that extended into the bays from the San Patricio County side of the line. There were also some changes from building up some land, so it rose above the water level and dredging a ship channel, which left some land submerged or separated from other land. San Patricio County filed a new suit against Nueces County and the Nueces County Appraisal District asking the trial court to interpret the 2003 judgement in light of the later changes. The court entered a summary judgment in favor of San Patricio County. That judgment prohibited Nueces County from taxing the disputed properties.

The court of appeals affirmed the trial court's judgment. Interpreting the 2003 judgment, the Court of appeals explained that "piers, docks, wharves, and similar facilities" extending out from the San Patricio County side were part of San Patricio County. The court noted that San Patricio County would be primarily responsible for providing facilities like roads and bridges to serve those facilities. San Patricio County also included land extending from the north shoreline that had once been submerged but that had been raised by the deposit of materials dredged from the bottom. San Patricio County got the benefit of "natural and artificial modifications" to its shoreline. Land that had become detached or submerged since 2003 also belonged to San Patricio County.

The Nueces County Appraisal District argued that it should not be bound by the 2003 judgment because it had not been a party to that lawsuit. The court of appeals explained that under §6.02 of the Tax Code an appraisal district has the same boundaries as its county. So, a judgement establishing the county's boundaries automatically establishes the appraisal district's boundaries even if the district is not a party to the suit.

Thomas v. Harris County
2023 WL 8587741 (Texas. App. – Houston [14th Dist.], December 12, 2023, no pet.) (not reported)

Issues: Challenging delinquent tax judgment

In 2014, taxing units sued several owners including Thomas for delinquent taxes on real property. Thomas filed an answer. A hearing was set before a tax master, and notice was sent to Thomas by certified mail. The notice came back unclaimed, and Thomas failed to appear for the hearing. Based on the master's recommendation, the trial court entered a judgement in favor of the taxing units in 2016. A few months later, Thomas paid the taxes

and the related costs, fees, interest, etc. The taxing units released their tax liens. Three years later, Thomas filed a bill of review to set aside the earlier judgment. The taxing units answered and included a claim that the matter was moot because the taxes had been paid and the tax liens released. The trial court ruled for the taxing units and dismissed the case. Thomas appealed.

The court of appeals affirmed the dismissal of the case. The higher court explained that Thomas's payment of the taxes rendered moot any subsequent challenge to the taxes or to the delinquent-tax judgment. The trial court lacked jurisdiction to consider Thomas's bill of review and correctly dismissed the case.

Harwood v. City of Austin
2023 WL 6617932 (5th Cir., October 11, 2023)

Issues: Jurisdiction of federal courts

The Tax Injunction Act, 28 USC §1341, is a federal statute that generally prevents federal courts from interfering with the assessment or collection of state and local taxes. If a taxpayer wants to challenge a state or local tax, he must do so in state court. This case concerns whether certain properties are in the City of Austin and therefore taxable by the city. The Fifth Circuit Court of Appeals considered whether federal courts could decide the case.

In 1986 the city made a deal with owners of some properties on Lake Austin. They were not receiving ordinary city services, and the city, by ordinance, agreed not to tax the properties until it provided services. In 2019, the city repealed the 1986 ordinance and enacted a new ordinance deeming the properties to be fully taxable. The city directed the appraisal district to appraise the properties as taxable by the city. The property owners sued in federal court seeking various declaratory and injunctive remedies. Generally, they wanted a ruling that their properties were not within the city's full-purpose jurisdiction. The trial court ruled that the Tax Injunction Act prevented the property owners from suing in federal court. The property owners appealed.

The court of appeals reversed the trial court and ruled that most of the property owners' claims could be raised in federal courts. The higher court reasoned that the 2019 ordinance was not a tax assessment; it was a "separate legal mandate." The ordinance affected things other than taxation, such as the city's authority to enforce its other laws in the area. The property owners were challenging their tax appraisals in separate cases (appeals of ARB orders) filed in state courts.

The court identified two remedies claimed by the property owners that could not be considered in federal court. The federal court could not invalidate the city's instructions to the appraisal district or require the city to tell the district that the properties were not taxable in the city.

Rodriguez v. City of El Paso

2023 WL 6319337 (Tex. App. – El Paso, September 28, 2023, no pet.) (not reported)

Issues: Delinquent-tax suits

Taxing units sued Rodriguez for delinquent 2018 and 2019 taxes on his real property. While that case was pending, Rodriguez sued the appraisal district to appeal ARB orders denying his protests for 2020 and 2021. The appraisal suit was dismissed because Rodriguez had not made the required tax payments. The taxing units added the delinquent 2020 and 20221 taxes to their pending delinquent-tax suit and moved for summary judgment. Rodriguez argued that he had paid the 2018 and 2019 taxes and that the appraisals were excessive in 2020 and 2021. The taxing units provided copies of their delinquent-tax records. Rodriguez provided a copy of a web receipt showing a tax payment and an "information history" showing that the payment was reversed on the same day that it was made. The taxing units explained that Rodriguez's electronic check didn't clear the bank. The trial court entered both a no-evidence summary judgment and a conventional summary judgment in favor of the taxing units, and Rodriguez appealed.

The court of appeals affirmed the conventional summary judgment for the taxing units. The higher court explained that Rodriguez could not raise appraisal issues in a delinquent-tax suit. The same was true for Rodriguez's vague claim that the appraisal district had failed to send him some notice. He raised those issues in his appraisal suit but forfeited that suit by failing to pay taxes. The taxing units' evidence was sufficient to show that Rodriguez had not successfully paid any taxes. Further, the court of appeals explained that a claim of payment is an affirmative defense that Rodriguez waived when he failed to plead it.

Although the court of appeals affirmed the traditional summary judgment for the taxing units, it reversed the no evidence summary judgment. The court found technical insufficiencies in the taxing units' pleadings.

Jones v. King
2023 WL 5969378 (W.D. Tex., September 13, 2023)

Issues: Official immunity

This case involves a widespread feud between officials and their various relatives. Renteria, Busse, and King were members of the appraisal district's board of directors. Busse and King claimed that Renteria did not really live in the county and that he was not eligible to serve on the board. Busse and King demanded that Renteria resign. They voted for a board resolution demanding his resignation. They also voted in favor of having the appraisal district sue him. Renteria sued them in federal court alleging that had violated his First Amendment rights. The court gave a magistrate judge the job of determining whether Busse and King were immune from Renteria's claims.

In a lengthy opinion, the magistrate judge concluded that the two were immune. The judge explained that members of a governmental body like the board of directors have the right

to express their opinions and take action on the eligibility of other members of the body. Thay can vote to authorize a lawsuit on behalf of the governmental organization. It didn't matter that they might have acted out of a personal grudge against Renteria. In the judge's words, "King and Busse, acting in their official capacities as members of the Appraisal Board, are shielded from liability pertaining to votes and resolutions that they participated in and were adverse to [Renteria], no matter how malicious their motives." Renteria failed to show a First Amendment violation and claims should be dismissed.

The Duncan House Charitable Corporation v. Harris County Appraisal District
2023 WL 5655872 (Tex. September 1, 2023)

Issues: Exemptions

Duncan House applied for a charitable exemption in 2017, and the appraisal district denied the application. Following an unsuccessful protest to the ARB, Duncan House sued the district. The suit was still pending in the spring of 2018. Duncan House did not file an exemption application, so the district never considered whether to grant an exemption for 2018. Duncan House nevertheless filed a protest in 2018. When the ARB denied the protest, Duncan House added a 2018 exemption claim to its pending lawsuit. The trial court dismissed the 2018 claim because Duncan House had not applied for the exemption in 2018. The court of appeals affirmed the trial court's decision. Duncan House then asked the Texas Supreme Court to consider the case, and the Supreme Court agreed.

The Supreme Court reversed the rulings of the lower courts. The high Court relied on §11.43 of the Tax Code which says that a charitable exemption (under §11.18 of the Tax Code), once allowed in one year does not require new applications in subsequent years unless the appraisal district instructs the property owner to file a new application. A final determination of Duncan House's 2017 exemption claim had not yet been made, so it was impossible to say whether Duncan House had to file an application for 2018. Without a final determination of the 2017 exemption claim, the lower courts should not have dismissed the 2018 claim. The Supreme Court sent the case back to the trial court for further proceedings.

Editor's Comment: The Supreme Court's reasoning puts a property owner in the position of Schrodinger's cat. The owner might be required to file an exemption application, or he/she might not, and that question won't be determined until something happens in the future. The law doesn't work like that. The correct answer is simple. In 2018, the exemption claimed by Duncan House had ***never been allowed***. Thus, looking at the spring of 2018, Duncan House was required to file a new application. Its failure to do so should result in the denial of the 2018 exemption.

Runnels v. Tax Loans USA Ltd.
2023 WL 5488438 (Tex. App. – Amarillo, August 24, 2023, pet. denied) (not reported)

Issues: Transferred tax liens

Property owned by two brothers was subject to delinquent taxes for 2014 and prior years. One of the brothers, Tony, took out a property-tax loan from Tax Loans USA. The tax office transferred the tax liens to Tax Loans USA. Tony made the payments for a while and then died. Nobody made the payments after that. Tax Loans USA sued the owners, including Runnels. The taxing units joined the suit to pursue their taxes for 2015 and later years. The trial court entered a summary judgment for the plaintiffs, and Runnels appealed.

Runnels argued that if a property owner has two or more owners, they must all agree to a property-tax loan and to the transfer of tax liens. The court of appeals rejected that argument. The court reasoned that a loan and a transfer of tax liens do not require the participation of all property owners. This transaction was legal and binding even though Tony acted alone to get the loan.

The higher court noted, however, that Tax Loans USA's summary-judgment evidence was contradictory as to the exact amount due. One document included an unexplained "estimated expense." The court therefore reversed the summary judgment for Tax Loans USA and sent the case back to the trial court for further consideration.

The court of appeals also explained that, in general, a summary judgment does not deprive a party of his/her right to a jury trial if there are no disputed factual issues for a jury to decide. The court of appeals declined to consider a couple of other issues because they were not ripe or because Runnels had not briefed them adequately.

Cantu v. Bexar County Appraisal District
2023 WL 5239688 (Tex. App. – San Antonio, August 16, 2023, no pet.) (not reported)

Issues: Immunity from suit

Following an unsuccessful protest, Cantu sued the appraisal district to contest the appraised value of his property. He also named the chief appraised as a defendant and threw in a hatful of vague claims to the effect that the chief appraiser was maliciously violating his rights. The appraisal district filed a plea to the jurisdiction asking that the chief appraiser be dismissed from the case altogether and that all non-tax claims against the district be dismissed. The district argued that the chief appraiser was immune from the suit. The trial court sustained the district's plea. Cantu filed an interlocutory appeal complaining that the chief appraiser should not have been dismissed.

The court of appeals dismissed the appeal. The higher court explained that ordinarily a party can appeal only a final judgment that disposes of all claims and all parties. Section 51.014 of the Civil Practice and Remedies Code creates an exception to the general rule. It allows an interlocutory appeal of a trial court's order that "denies a motion for summary judgment that is based on as assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state." In this case, however, the trial court had not *denied* the motion to dismiss the chief appraiser; it had *granted* that

motion. There was no basis for an interlocutory appeal. The court of appeals dismissed the appeal and sent the case back to the trial court.

Johnson v. Tepper
No. 2023 WL 5020301 (Tex. App. – Amarillo, August 7, 2023, pet. denied) (not reported)

Issues: Vexatious litigants

Johnson filed seventeen lawsuits related to his tax appraisals over the course of seven years. In this case, he sued the appraisal district's lawyer for defamation based on statements that the lawyer made during an ARB hearing. The lawyer, our own Matthew Tepper, only identified Johnson as the owner of the subject property. Tepper responded to the suit with a motion to have Johnson declared a vexatious litigant and to require a substantial deposit from Johnson in order for him to continue with the case. The trial court granted that motion, and Johnson appealed.

The court of appeals affirmed the ruling for Tepper. The higher court first noted that a person who has been determined to be vexatious litigant can file an interlocutory appeal of that order. Under §11.054 of the Civil Practice and Remedies Code, a court can designate a plaintiff as a vexatious litigant if the person: 1) has no reasonable probability of prevailing; and 2) has brought at least five cases as a pro se litigant that were determined adversely the person within the last five years. Johnson had no realistic chance of prevailing in this case because Tepper didn't say anything bad about him. Further, Tepper's statements were privileged because they were made in the context of a quasi-judicial ARB hearing. Tepper's evidence showed that Johnson had experienced adverse determinations in at least five other lawsuits or appeals during the seven years preceding this case. On appeal, Johnson offered a constitutional challenge to the vexatious-litigant law, but the court of appeals refused to consider it because Johnson had not raised it in the trial court.

Children of the Kingdom v. Central Appraisal District of Taylor County
674 S.W.3d 407 (Tex. App. – Eastland, August 2, 2023, pet. denied)

Issues: Delinquent tax suits; service of process; religious organizations

Pursuant to contracts with taxing units, the appraisal district sued Children of the Kingdom and The Koyoe Society for delinquent taxes on real property. The defendants' address was a vacant tract of land. There was nobody there who could be served with the suit papers. The trial court allowed them to be served by substitute service. The process server attached the suit papers to a mailbox and gatepost on the property. When the defendants did not answer or appear for trial, the court entered a judgement against them. The defendants apparently found out about the judgment in time to appeal.

The court of appeals affirmed the trial court's judgment for the district. The defendants claimed to be religious organizations. They claimed that the suit should have been filed

in federal court because it involved the exercise of their religion. The court of appeals explained that the district's suit against the defendants was based solely on state law; no federal claim was involved. State law allowed the taxing units to contract with the appraisal district and allowed the district to sue in state district court. The Tax Code provided all the standing that the district needed to file the suit.

Next, the defendants tried arguing that the property was owned by a trust. The tax records in evidence showed the defendants to be the owner and a lienholder. They had not offered any evidence to the contrary. The process server's affidavits showed that substituted service was proper and that the defendants had been properly served. There was no dispute that he had left the papers at the right address. Further the defendants admitted receiving a notice of the trial court's hearing which had been sent by the district's lawyer. A notice of a hearing can be served by a party's lawyer pursuant to Rule 21a of the Texas Rules of Civil Procedure.

The defendants also complained that the property should receive a religious exemption, but their religious beliefs prevented them from filing an application. The court of appeals explained that the law requiring an exemption application was "neutral and of general applicability." It was not directed at any religious practice. It did not violate the defendants' right to practice their religion. Their liability for the taxes was based on their ownership of the property, not on any contract or agreement with the state or the district.

Thompson v. Landry
2023 WL 4770126 (Tex. App. – Houston [1st Dist.], July 27, 2023, no pet. hist.) (not reported)

Issues: Delinquent tax suits; service of process

In 2005, taxing units filed suit for delinquent taxes on a real property with multiple owners. The title to the property was messy and unclear. Several of the owners whose names appeared in the deed records had died, and their heirs were unknown. The taxing units sued about ten named defendants and a lot of unknown heirs. They did not sue Landry by name. Lawyers for the taxing units told the court that, despite their diligent search, they could find only one defendant. The court allowed service by posting. When nobody answered, an attorney ad litem appeared for the defendants. The court entered a default judgment, and, in 2007, the sheriff sold the property to Thompson.

About ten years later, Landry filed a motion in the delinquent tax case claiming that she was an owner who had not been properly served and seeking to undo the tax sale. After a hearing, the trial court ruled that the tax sale had been void. The court of appeals reversed the trial court's order, ruling that Landry could not challenge the tax sale in the original delinquent-tax case. Landry started over and filed a new case. Both Landry and Thompson filed motions for summary judgment in the new case, and the trial court entered a summary judgment for Landry. Thompson appealed.

The court of appeals reversed the summary judgment for Landry and ruled that unsettled questions of fact prevented the entry of a summary judgment for either party. The higher court explained that if Landry was right about not having been properly served in the delinquent-tax case, she could attack the judgment and the tax sale even after ten years. Constitutional due-process principles gave her that right in spite of the Tax Code's statutes of limitations (§§33.54 and 34.08).

Landry had to show that the taxing units had not made a diligent effort to find her as required by the Constitution and by Rule 117a of the Texas Rules of Civil Procedure. She could use extrinsic evidence, i.e., evidence that had not been offered in the delinquent-tax case. The evidence showed that at the time of the delinquent-tax suit Landry lived in one of several manufactured homes on the property. The tax records showed her as an owner of the manufactured home. She had even paid some property taxes on the land. There was evidence that Landry's husband had actually signed some type of lease with Thompson after the tax sale, but the evidence did not show that Landry knew about the lease or the tax sale. Thus, the evidence left an unresolved question of fact about whether the taxing units had diligently tried to find the owners. The court of appeals did not decide whether Thompson's defense of laches might apply in a case of this kind, but, even if it did, the unresolved factual issues precluded a judgment for Thompson. The court sent the case back to the trial court.

Tai Texas Business LLC v. Dallas County
2023 WL 4446288 (Tex. App. – Dallas, July 11, 2023, no pet.) (not reported)

Issues: Delinquent tax suits

Business personal property was appraised and taxed in the name of Ishin Sushi Sake Bar (Ishin). When the taxes weren't paid, the taxing units determined that Ishin was the assumed name of Tai Texas Business LLC (TTB). They sued TTB d/b/a Ishin. TTB filed an answer in the suit but failed to appear for trial. At trial, the taxing units offered certified copies of their delinquent tax records and a certified copy of an assumed-name certificate showing that TTB was doing business as Ishin. The trial court entered judgment for the taxing units, and TTB appealed.

The court of appeals affirmed the judgment for the taxing units. TTB claimed that the trial court's judgement was erroneous because the taxes had been assessed in Ishin's name. The court of appeals disagreed. The court explained that under §33.47 of the Tax Code, delinquent-tax records provide all the evidence necessary to support a judgement. The assumed-name certificate admitted as evidence was sufficient to show that TTB was the owner liable for the taxes. TTB had no response to the taxing units' evidence. Thus the trial court's judgement was supported by the evidence.

Bronco Asset Management Company v. FYP, LLC
2023 WL 4355186 (Tex. App. – Corpus Christi- Edinberg, July 6, 2023, no pet.) (not reported)

Issues: Transferred tax liens

In 2018, FYP made a property-tax loan of about $310,000 to Bronco. The next year FYP sued Bronco to collect the debt and foreclose the transferred tax liens. FYP claimed taxes for 1998-2004, 2006-2010, 2012, and 2015-2017. Taxing units intervened to collect the taxes that had accrued after the loan. FYP and the taxing units filed motions for summary judgment. FYP's summary judgement evidence included certificates from the tax office showing that FYP had paid taxes for 2006-2010, 2012, and 2015-1017, a total of about $298,000. An Affidavit from an FYP officer alleged that FYP had also paid taxes for 1998-2004, but no actual records referred to those years. The taxing units submitted certified copies of their delinquent-tax records. The trial court entered a summary judgment for both FYP and the taxing units and awarded all that they had requested. The trial court also determined that the value of the property was about $623,000 based on the most recent appraisal roll. Bronco appealed.

The court of appeals reversed the summary judgment for FYP. The higher court was concerned because the summary judgment evidence did not include any records related to 2006-2010 and because the amount of the loan significantly exceeded the taxes paid according to the tax office's records. The gap between the two amounts (about $12,000) could not be explained by closing costs, which were limited by law to $900. If FYP claimed a lien for more than the amount lent to pay taxes, its contract with Bronco would be void under §32.06 of the Tax Code. So, the evidence was not sufficient to support the summary judgment against Bronco. The court sent FYP's claims against Bronco back to the trial court for further proceedings.

The court of appeals affirmed the summary judgment for the taxing units. Their motion for summary judgment had been sufficient to notify Bronco of their claims, and the certified records of their taxes were sufficient to establish a prima facie case under §33.47. Bronco had offered no evidence to raise a question of fact.

Bronco also attempted to argue that the trial court's value for the property was excessive. The court of appeals, however, ruled that Bronco could not contest that value because it had not protested the value before the ARB. Bronco could not raise a value issue in the context of a delinquent-tax suit.

ATI Jet Sales, LLC v. City of El Paso
677 S.W.3d 180 (Tex. App. – El Paso, July 5, 2023, no pet.)

Issues: Governmental immunity; tax warrants

In 2017, the appraisal district learned that an air charter business was operating at the local airport. Three related entities were involved in the venture, ATI Jet, ATI Jet Sales, and ATI Jet Sales West. None of them ever rendered any property. The district's appraisers researched public records and contacted officers of the three entities in order to determine which of them owned the six Lear Jets used in the charter operation. The officers were not very helpful, but the district determined that ATI Jet Sales West was the

owner. The district also determined that the aircraft were not being taxed anywhere else. The district appraised the aircraft in the name of ATI Jet Sales West. The ARB denied a protest, but nobody filed an appeal. When the taxes were not paid for three years, the taxing units sought a tax warrant. By this time, the taxing units had determined that some of the aircraft were actually owned by ATI Jet Sales, so they named both ATI Jet Sales and ATI Jet Sales West as defendants. The taxing units included an affidavit and copies of their delinquent-tax records with the application for the tax warrant. The trial court issued the tax warrant, and the sheriff seized one of the aircraft belonging to ATI Jet Sales. ATI Jet Sales contested the seizure and counter-claimed that the taxing units had illegally seized its aircraft to satisfy a debt of ATI Jet Sales West. The taxing units returned the aircraft, but ATI Jet sales persisted with its counterclaim. The taxing units filed a plea to the jurisdiction which was granted by the trial court.

ATI Jet Sales then filed a new suit against the taxing units alleging that they had unlawfully taken its aircraft. The taxing units responded with another plea to the jurisdiction asserting various defenses including their immunity from the suit. The trial court granted the plea to the jurisdiction and dismissed the case. ATI Jet Sales appealed.

The court of appeals affirmed the dismissal of the case. The higher court explained that the principle of governmental immunity includes an exception for a claim that a governmental entity took property illegally. In this case, however, the taxing units had not acted improperly. The Tax Code allows a taxing unit to seek a tax warrant and seize property to satisfy a property owner's tax debt. That is true even where the property is mistakenly appraised in the wrong name. ATI Jet Sales owed the taxes, even if the appraisal rolls mistakenly listed ATI Jet Sales West as the owner. The taxing units satisfied the Tax Code's requirements for a tax warrant. Their evidence established a prima facie case for the tax warrant and was not controverted by the defendants in the original case. There had been no illegal taking that might have allowed a suit against the taxing units.

Further, ATI Jet Sales could not overcome the taxing units' immunity by seeking a declaratory judgment. A declaratory judgement is just a procedural device that a court may use to resolve a case that is already within the court's jurisdiction. In this case, the taxing units' immunity deprived the trial court of jurisdiction, and the request for a declaratory judgment did not change that.

Harris County Appraisal District v. Crossview Partners, Ltd.
2023 WL 3873356 (Tex. App. – Houston [1st Dist.], June 8, 2023, no pet.) (not reported)

Issues: Interlocutory appeal

The ARB issued an order determining Crossview's protest. Crossview let the deadline for filing a lawsuit pass. Then it asked the ARB to reissue the order so as to give Crossview another opportunity to file a suit. The ARB refused. Crossview sued the appraisal district and the ARB complaining about the appraisal of its property and about the ARB's refusal to reissue the order. The ARB and the district filed pleas to the jurisdiction which were

granted by the trial court. Crossview then filed a motion for a new trial. The trial court granted Crossview's motion, vacated its earlier orders dismissing the case, and remanded the matter to the ARB. The defendants filed an interlocutory appeal.

The court of appeals ruled that the interlocutory appeal was not allowed under the circumstances presented. Section 51.014 of the Civil Practice and Remedies Code allows a governmental unit to file an interlocutory appeal granting or denying the unit's plea to the jurisdiction. The higher court reasoned that the trial court's order was not an order granting or denying the defendants' plea to the jurisdiction. It was an order granting a motion for new trial. The court said that such an order can be challenged by a writ of mandamus but not by an interlocutory appeal. So, the court of appeals dismissed the appeal, leaving the trial court's order standing for the time being.

Editor's Comment: This opinion really emphasizes form over substance. The district and the ARB asked the trial court to dismiss the case, and the trial court ultimately refused. The trial court's order may have been called an order granting a new trial, but in substance it was a denial of the defendants' plea to the jurisdiction. Now the parties and the courts will have to waste more time and energy on a case that should clearly be dismissed.

Pecos County Appraisal District v. Iraan-Sheffield Independent School District
672 S.W.3d 401 (Tex. May 19, 2023)

Issues: Lawyers representing taxing units

This is yet another chapter in the continuing saga of Brent Lemon, a lawyer who convinced several taxing units to make novel efforts to collect more taxes on minerals belonging to Kinder Morgan. In this instance, the school district contracted to pay Lemon a contingent fee, 20% of what he could collect. Lemon sued Kinder Morgan and the appraisal district on behalf of the school district and demanded that the appraisal district reappraise Kinder Morgan's minerals for several past years. Kinder Morgan responded by challenging Lemon's authority to represent the school district under the contingent-fee contract. The trial court sided with Kinder Morgan and dismissed the case. Because it was too late for the school district to try filing another suit, the trial court dismissed the case with prejudice. The court of appeals reversed the trial court and ruled that Lemon's contract was legal. The Supreme Court agreed to consider the case.

The high Court reversed the court of appeals and ruled that Lemon's contract was illegal and void. The Court explained that §6.30 of the Tax Code allows a taxing unit to enter a contingent-fee contract with a lawyer for the collection of delinquent taxes. The taxes in this case, however, were not delinquent; they had not even been assessed. The Tax Code does not allow a taxing unit to enter a contingent-fee contract for a lawyer to advocate for increased appraised values. The Court noted that such a contract could create an incentive for a lawyer to "maximize recovery in ways that may be abusive, coercive, or harassing."

Lemon's contract with the school district was void, and he had no authority to file the suit. The Supreme Court, however, said that the case should not be dismissed with prejudice. Instead, the school district should have an opportunity to hire a new lawyer or enter into a valid contract with Lemon.

Harpole v. Rains County Appraisal District
2023 WL 3510829 (Tex. App. – Tyler, May 17, 2023, no pet.) (not reported)

Issues: Owners liable for taxes; US dollars

Following an unsuccessful protest, Harpole sued the appraisal district over the appraisal of his property. He raised a couple of creative arguments. First, he argued that his property could not be taxed because he was not a "person." Second, he argued that his property cloud not be appraised or taxed in US dollars, only in gold or silver. The appraisal district moved for the dismissal of those claims and for a summary judgement. Harpole wanted an oral hearing on the district's motions and wanted to examine the chief appraiser in court. The trial court granted the district's motions without an oral hearing. Harpole appealed.

The court of appeals affirmed the ruling for the district. The higher court looked at a provision in the Government Code (§311.005) saying that the definition of "person" *includes* corporations, trusts, partnerships, etc. The court explained that human beings are persons too, even if they are not specifically mentioned in that statute. The court also explained that federal notes (dollars) are a perfectly valid way to measure the value of a property. The question of whether Harpole could pay his taxes with gold or silver was not ripe for consideration because he had not tried to do that. The court explained, however, that dollars are an acceptable way of paying taxes.

Finally, the court of appeals explained that an oral hearing is not required in connection with a motion to dismiss or a motion for summary judgment. Harpole did not have the right to an oral hearing or to cross examine the chief appraiser in court.

Nevarez v. City of El Paso
2023 WL 3325197 (Tex. App. – El Paso, May 9, 2023, no pet.) (not reported)

Issues. Exhaustion of remedies; delinquent tax suits

Taxing units sued to foreclose tax liens on three real properties. They named thirty-two defendants but did not seek to hold anyone personally liable for the delinquent taxes. Some defendants were served by posting, and some, including Navarez, were served personally. Most defendants defaulted, but Navarez answered and asserted nineteen defenses, mostly dealing with notice matters and appraisal matters. At the taxing units' request, the trial court entered default judgments against the defendants who had not appeared and a summary judgment against Navarez. Navarez appealed.

The court of appeals affirmed the judgment for the taxing units. The court of appeals first addressed Navarez's claim that notices of appraised value and tax bills had not been delivered. The court explained that an appraisal district's failure to send a notice of appraised value does not invalidate an appraisal, and a tax office's failure to send a tax bill does not invalidate a tax. A property owner can raise claims about notices in a timely protest filed with the ARB under §41.411 of the Tax Code, but no one had done that in this case. The same was true for claims about appraisal matters. So, the courts could not consider Nevarez's claims about those matters.

The court of appeals went on to explain that the taxing units had met their burden of proof by including copies of their delinquent-tax records with their motion for summary judgment. Navarez responded to those records with general allegations but no specific evidence. There were no unresolved factual issues that would have prevented a summary judgment for the Taxing units. The court also noted that Navarez had failed to brief several of his claims.

Finally, Navarez tried arguing that the defendants who had defaulted had not been properly served. The court of appeals responded that Navarez had no standing to complain about alleged errors that did not apply to him.

Montgomery County v. Mission Air Support, Inc.
2023 WL 3101508 (Tex. App. – Beaumont, April 27, 2023, no pet.) (not reported)

Issues. Exhaustion of remedies; delinquent tax suits

Taxing Units sued Mission for delinquent 2016-2017 taxes on two aircraft. The taxing units sought to foreclose their tax liens but did not claim that Mission was personally liable for the taxes. Mission responded by attempting to raise appraisal issues. It claimed that the aircraft had not had taxable situs in the county at the relevant times, that the aircraft had been owned by another company, and that the aircraft were exempt as non-business personal property. The taxing units pointed out that Mission had never raised any of those claims in a protest before the ARB. The taxing units asked the trial court to dismiss Mission's appraisal-related defenses. When the trial court refused, the taxing units appealed.

The court of appeals reversed the trial court and dismissed Mission's defenses. The higher court explained that a property owner must raise appraisal claims before the ARB, not in a delinquent-tax suit. There are a couple of exceptions found in §42.09(b) of the Tax Code. If a delinquent-tax suit seeks to establish a defendant's personal liability, the defendant can argue that it didn't own the property. That exception didn't apply because the taxing units were not claiming that Mission was personally liable for the taxes. If a delinquent-tax suit seeks the foreclosure of a tax lien on *real* property, the defendant can argue that the real property was not located in the taxing unit at the relevant time. This case, however, involved personal property. Mission could not raise any appraisal-related issues in defense against the delinquent-tax suit, and the trial court should have dismissed its defenses.

J-W Power Co. v. Frio County Appraisal District
2023 WL 3081772 (Tex. App. – San Antonio, April 26, 2023) rev'd, 691 S.W.3d 923 (Tex., June 21, 2024)

Issues: Correcting appraisal rolls

This is yet another in a series of cases involving pipeline compressors. The facts are identical to those in *J-W Power Co. v. Jack County Appraisal District* and *J-W Power Co. v. Wise County Appraisal District* decided earlier this year and summarized below. The San Antonio Court of Appeals agreed with the Fort Worth Court of Appeals and ruled that J-W Power could not use a motion under §25.25(c) to raise a claim that it had already raised in a protest, a claim that had already been decided finally by the ARB.

Benser v. Dallas County
2023 WL 2661255 (Tex. App. – Dallas, March 28, 2023, no pet.) (not reported)

Issues: Delinquent tax suits

Benser, dba Apex, owned land with a dilapidated structure on it. In response to a 2011 suit by the city, a court declared the property a nuisance, and the city demolished the structure. The city also mowed weeds on the property several times. A lien secured the city's costs for the demolition and mowing. Nobody paid taxes on the property for many years. In 2016 the city and other taxing units mistakenly sued a Florida company with a name similar to Apex. After the court entered a default judgment, the taxing units discovered their mistake and nonsuited the case. They filed another suit in 2018 and correctly identified Apex as the property owner. The city sought to recover the costs of demolishing the structure and mowing the property. All the taxing units sought to recover their taxes. Apex counterclaimed to recover the value of the structure. After a trial, the trial court ruled for the taxing units. Apex appealed.

The court of appeals affirmed the judgement for the taxing units. Apex advanced a strange argument that the misdirected 2016 suit had somehow ended the accrual of penalties and interest on the delinquent taxes, but the court of appeals rejected that argument. Under §33.56 of the Tax Code, the taxing units had the authority to vacate the erroneous judgement in the earlier case. Vacating the judgement revived the delinquent taxes and the liens securing them, and the taxes continued to accrue penalties and interest. The Health and Safety Code allows a city to rectify a nuisance and collect its costs as part of a delinquent-tax suit. There is no limitations period for a city's suit to foreclose demolition liens.

The court of appeals went on to explain that the city had the authority to demolish the structure and it followed the law in exercising that authority. Apex was properly notified when the city sent it a notice by certified mail, posted a notice on the property, and published a notice in the newspaper. If the city had demolished the structure illegally,

Apex would have had only a thirty-day period in which to file suit. Its counterclaim against the city was filed far too late.

Hunt Woodbine Realty Corp. v. Dallas Central Appraisal District
2023 WL 2596074 (Tex. App. – Dallas, March 22, 2023, no pet.) (not reported)

Issues: Correcting appraisal rolls

Hunt Woodbine owned a parking lot adjacent to a hotel. The hotel was owned by a related business. The appraisal district appraised each property separately for five years. Then Hunt Woodbine filed a motion to correct the past years' appraisal rolls under §25.25(c) of the Tax Code. Hunt Woodbine claimed that its parking lot had been the subject of multiple appraisals. After losing before the ARB, Hunt Woodbine sued the appraisal district. Both sides filed motions for summary judgment. Hunt Woodbine offered expert testimony to the effect that the two properties were an economic unit and that the district's income-approach appraisal of the hotel had included the value of the parking lot. Thus, the district had allegedly included the value of the parking lot twice, once as part of the hotel value and once in a separate account. The district did not submit any evidence. The trial court granted the district's motion and denied Hunt Woodbine's motion. Hunt Woodbine appealed.

The court of appeals reversed the trial court and ruled that neither side was entitled to a summary judgment. The court said that multiple appraisals can exist even though the appraisal roll, on its face, does not show the same property listed twice. When considering a claim of multiple appraisals, a court can look behind the appraisal roll itself. The expert testimony was enough to raise a question of fact about whether multiple appraisals had occurred, but it was not sufficient to prove the expert's theory conclusively. It was not sufficient to establish that the parking lot account should simply be deleted. The court of appeals sent the case back to the trial court for further proceedings.

A comment in the court of appeals' opinion raises the question of whether the owner of one property account can even complain about multiple appraisals if the allegedly redundant account is listed in another owner's name. But the court did not answer that question.

Miller v. Jackson County
2023 WL 2414904 (Tex. App. – Corpus Christi-Edinburg, March 9, 2023, no pet). (not reported)

Issues: Excess proceeds following tax sale

Taxing units sued several people for delinquent taxes. The defendants didn't appeal, and the trial court entered a default judgment. The subsequent tax sale resulted in $145,000 in excess proceeds. Four defendants led by Miller petitioned the court for the money. The court entered an order on November 12, 2020, directing that all the money be released to the Miller group. But the court clerk didn't release the money right away. Soon, another

group led by Eubanks filed their own petition for the money. Both groups of claimants filed their petitions within two years following the tax sale. Without mentioning its earlier order, the court entered a second order dated April 5, 2021, directing that about $75,000 be paid to the Eubanks group. The Miller group appealed that second order.

The court of appeals explained that an order releasing excess proceeds is appealable under §34.04 of the Tax Code. The trial court had jurisdiction over both petitions. But the trial court erred by entering the second disbursement order without taking steps to set aside the first disbursement order. The court of appeals reversed the trial court's second disbursement order and referred the case back to the trial court for further proceedings.

J-W Power Co. v. Wise County Appraisal District
2023 WL 2325507 (Tex. App. – Fort Worth, March 2, 2023) rev'd, 691 S.W.3d 923 (Tex., June 2, 2014)

Issues: Correcting appraisal rolls

This is another in a series of cases involving pipeline compressors. The facts are identical to those in *J-W Power Co. v. Jack County Appraisal District* decided earlier this year and summarized below. The Fort Worth Court of Appeals once again ruled that J-W Power could not use a motion under §25.25(c) to raise a claim that it had already raised in a protest, a claim that had already been decided finally by the ARB. The court's opinion in this case relies heavily on its earlier opinion in the Jack County case.

J-W Power Co. v. Jack County Appraisal District
2023 WL 415517 (Tex. App. – Fort Worth, January 26, 2023) rev'd, 691 S.W.3d 911 (Tex., June 21, 2024)

Issues: Correcting appraisal rolls

This is a lingering remnant of the compressor cases. The Tax Code directs appraisal districts to appraise leased heavy equipment (including pipeline compressors) at values far below actual market value. When that provision was enacted, appraisal districts resisted, arguing that the Texas Constitution required them to appraise property at market value. The dispute resulted in hundreds of lawsuits. In 2018, the Texas Supreme Court shocked everyone by ruling that the Constitution did not require appraisals based on market value. The Court upheld the Tax Code's provision (§§23.1241 and 23.1242). The Court further interpreted the Code to make compressors taxable at the owner's location, not where the compressors were actually located. Some property owners, including J-W Power began trying to claim the benefit retroactively for past years.

J-W Power filed protests concerning its compressors located in Jack County for several years prior to 2018. The ARB ruled against it, but J-W Power did not appeal. Then after the Supreme Court's ruling, J-W Power tried to contest the 2013-2016 appraisals retroactively by filing motions with the ARB under §25.25(c). It claimed that its compressors were subjected to multiple appraisals and that they had not existed in Jack

County. The ARB denied the motions, and J-W Power sued the district. The district asserted the defense of *res judicata*; it argued that the question of whether the property should be appraised as heavy-equipment inventory had already been finally decided by the ARB in the earlier protests and could not be raised again. The trial court entered summary judgment for the district, and J-W Power appealed.

The court of appeals affirmed the summary judgment for the district. J-W Power's motion under §25.25(c) was the same claim asserted in the earlier protests. J-W Power cited §25.25(l), which states that a property owner may file a §25.25(c) motion even if the owner previously filed a protest relating to the value of the property. The court explained that the protests had not been protests about market value. They had specifically raised J-W-Power's claim about heavy-equipment inventory. Section 25.25(l) did not allow J-W Power to raise the same claim again in a motion. When the ARB determined the protests, J-W Power had a ripe claim that it should have appealed.

The court of appeals further explained that it did not matter that the ARB had *denied* the §25.25(c) motion instead if *dismissing* the claim. The ARB's order was not inconsistent with a determination that the motion was precluded by the earlier protests.

Attorney General's Opinions

Opinion No. KP-0444
May 20, 2023

Issues: Maintenance and operations taxes

In 2020, voters in the City of Austin approved a tax rate higher that the voter-approval tax rate. Ahead of the election the city council adopted a resolution promising the voters that the extra money would go toward public transportation. The city planned to act through a nonprofit local government corporation. The extra tax money would go to the corporation. The corporation planned to borrow money by selling bonds or otherwise. Sen. Bettencourt asked the attorney general whether the city could, "earmark use of a voter-approved increase in its Maintenance and Operation property tax revenue for purposes other than Maintenance and operation, e.g., debt service?"

The attorney general responded that §26.07 of the Tax Code requires voter approval for some tax rates, but it does not address what a taxing unit can do with the extra money. But §26.012 makes a distinction between m&o taxes and debt taxes. A taxing unit cannot "earmark" m&o taxes for debts.

He went on to say that the law does not prohibit a city from transferring money to a local government corporation, but a city may not obligate itself to transfer money to the corporation over a period of years. Doing so creates a "debt" and requires the assessment of a debt tax and the creation of a sinking fund. *see* Texas Constitution Art. XI, §5. The

city could not commit itself to transferring m&o money to the corporation over a period of years.

Opinion No. KP-0432
February 24, 2023

Issues: Appraisal district's legal counsel

Rene Montalvo was a lawyer in private practice in Starr County. His clients included the Starr County Appraisal District. Then he became the county attorney. He asked the attorney general whether he could continue to represent the appraisal district. The attorney general replied that a county attorney may not also serve as the appraisal district's legal counsel. There is no statute that prohibits a county attorney from representing the appraisal district. In fact, §6.43(c) of the Tax Code contemplates a county attorney representing both the appraisal district and the ARB. The attorney general nevertheless concluded that the Code did not provide sufficient authority for a county attorney to serve as an appraisal district's legal counsel.