



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 2018

The Honorable Charles Schwertner
Chair, Committee on Health & Human Services
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0215

Re: Whether a municipality is authorized to adopt a residential homestead property tax exemption that establishes a floor for the exemption in an amount greater than \$5,000, and, if not, whether an appraisal district may disregard or modify the exemption (RQ-0242-KP)

Dear Senator Schwertner:

You request an opinion regarding “whether a home-rule municipality in Texas can legally adopt a residential homestead property tax exemption that provides for a minimum exemption amount greater than \$5,000.”¹ Article VIII, subsection 1-b(e) of the Texas Constitution authorizes municipalities to exempt from taxation a percentage of the value of a residence homestead, and it establishes a legislatively-defined floor for the exemption in an amount of \$5,000:

The governing body of a political subdivision . . . may exempt from ad valorem taxation a percentage of the market value of the residence homestead The percentage may not exceed twenty percent. However, the amount of an exemption authorized pursuant to this subsection may not be less than Five Thousand Dollars (\$5,000) unless the legislature by general law prescribes other monetary restrictions on the amount of the exemption.

TEX. CONST. art. VIII, § 1-b(e). Consistent with this provision, the Legislature provided for a \$5,000 exemption in instances when the percentage adopted by a political subdivision and applied to a specific property would otherwise result in an exemption amount of less than \$5,000:

If the percentage set by the taxing unit produces an exemption in a tax year of less than \$5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of \$5,000 of

¹Letter from Honorable Charles Schwertner, Chair, Senate Comm. on Health & Human Servs. to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Aug. 16, 2018), <https://texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

the appraised value. The percentage adopted by the taxing unit may not exceed 20 percent.

TEX. TAX CODE § 11.13(n).

You explain that the City of Cedar Park (“the City”), located in both Travis and Williamson Counties, adopted an ordinance providing for a residential homestead property tax exemption “equal to 1% of the appraised value of the residential homestead property, but not less than \$10,000.” Request Letter at 1. You further explain that the Travis County Central Appraisal District “refused to implement the City’s homestead exemption as adopted and instead forwarded a certified tax roll reflecting a \$5,000 minimum amount, claiming state law does not authorize the City to adopt a \$10,000 minimum.” *Id.* at 2.² You therefore ask about the authority of a home-rule municipality to adopt a floor for the exemption greater than the \$5,000 provided for in the statute. *Id.* at 1.

“Home-rule municipalities derive their powers from the Texas Constitution and possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power.” *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531 (Tex. 2016) (quotation marks omitted). No municipal ordinance “shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5(a). And the Property Tax Code provides that it “supersedes any provision of a municipal charter or ordinance relating to property taxation.” TEX. TAX CODE § 1.02; *see id.* § 1.01 (“This title may be cited as the Property Tax Code.”). When construing statutes, we determine their meaning from the context of the statute’s surrounding provisions. *See In re Office of the Att’y Gen. of Tex.*, 456 S.W.3d 153, 155 (Tex. 2015) (“When construing statutes, or anything else, one cannot divorce text from context. The meaning of words read in isolation is frequently contrary to the meaning of words read contextually in light of what surrounds them.”). Read together, article VIII, subsection 1-b(e) of the Constitution and section 11.13 of the Tax Code establish a framework whereby a political subdivision may adopt a percentage of the market value of a residence homestead to exempt from ad valorem taxation, up to twenty percent of the market value. TEX. CONST. art. VIII, § 1-b(e) (“The governing body of a political subdivision . . . may exempt from ad valorem taxation *a percentage of the market value of the residence homestead . . .*” (emphasis added)); TEX. TAX CODE § 11.13(n) (“[a]n individual is entitled to an exemption from taxation by a taxing unit of *a percentage of the appraised value of his residence homestead . . .*” (emphasis added)). Those provisions also provide that if a political subdivision’s percentage, as applied to a specific property, results in an exemption of less than \$5,000, the owner “is entitled to an exemption of \$5,000 of the appraised value.” TEX. TAX CODE § 11.13(n). Article VIII, subsection 1-b(e) grants municipalities the option to adopt a percentage, and it establishes a dollar value a property owner is entitled to regardless of the value of the property, authorizing only the Legislature to change that dollar amount. TEX. CONST. art. VIII, § 1-b(e) (“\$5,000 *unless the legislature by general law prescribes other monetary restrictions on the amount of the exemption*” (emphasis added)). Nothing in the Constitution or the Tax Code authorizes a political subdivision

²You also note that the Williamson County Central Appraisal District certified its tax roll reflecting a \$10,000 minimum amount, meaning the City’s homestead exemption ordinance will result in two different minimum amounts in two different counties for the upcoming fiscal year. *Id.* at 1–2.

to establish a floor dollar amount different from the amount established by the Constitution and the Legislature.³ Cf. TEX. TAX CODE § 11.13(d)–(e) (providing a \$3,000 exemption to an individual who is disabled or is 65 or older “unless a larger amount is specified by . . . the governing body authorizing the exemption”). Because the Constitution and subsection 11.13(n) establish an exemption amount of \$5,000, they supersede a municipal ordinance adopting a different amount.

In addition to statutory requirements, a municipality’s adoption of a floor exemption amount above \$5,000 raises constitutional concerns. Article VIII, subsection 1(a) of the Constitution requires that all taxes be equal and uniform. TEX. CONST. art. VIII, § 1(a). Article VIII, subsection 1(b) provides: “All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, . . . shall be taxed in proportion to its value.” *Id.* art. VIII, § 1(b). The Texas Supreme Court long ago held that this provision “controlled municipal as well as state taxation.” *City of Austin v. Austin Gaslight & Coal Co.*, 7 S.W. 200, 203 (Tex. 1887). It further concluded that in the absence of legislation clearly expressing an intention to authorize a municipality to exempt property from taxation, a municipality’s efforts to do so violated the Constitution. *Id.* Municipalities possess clear authority to adopt a percentage of the value of a residence homestead to exempt from taxation, up to twenty percent. TEX. CONST. art. VIII, § 1-b(e). However, article VIII, § 1-b(e) and section 11.13(n) do not provide political subdivisions with authority to set a floor exemption amount higher than \$5,000.⁴ Any set dollar amount exemption established by a municipality in excess of \$5,000 is effectively an additional tax exemption not in proportion to the property’s value and not authorized by either the Constitution or the Legislature.

Moreover, article VIII, subsection 1-b(e) prohibits a political subdivision’s tax exemption from exceeding twenty percent. *Id.* art. VIII, § 1-b(e). Adopting a \$10,000 floor exemption creates the potential for an exemption exceeding twenty percent as applied to certain properties. For example, a \$45,000 homestead property with a \$10,000 exemption will receive an exemption on twenty-two percent of the value of the property. While a \$5,000 minimum exemption likewise creates the potential for exceeding twenty percent, because the Constitution expressly authorizes that floor amount, it does not pose the same constitutional concerns. Therefore, a court would likely conclude that an alternative exemption amount adopted by a political subdivision violates article VIII, sections 1(a) and (b) and subsection 1-b(e) of the Constitution. *See City of Austin*, 7

³You suggest that nothing in article VIII, section 1-b(e) or Tax Code section 11.13(n) “expressly prohibits a higher minimum exemption amount” than the \$5,000 included in the statute. *Id.* at 3. However, those provisions establish a specific amount and do not provide any authority for a political subdivision to deviate from that amount. That amount is a minimum below which a specific property owner’s exemption may not fall, not a minimum above which a political subdivision can raise the exemption. When those provisions apply, the property owner is “entitled to an exemption of \$5,000 of the appraised value,” not \$5,000 or a higher amount as determined by the political subdivision. TEX. TAX CODE § 11.13(n).

⁴The City’s adopted residential homestead property tax exemption provides for an exemption equal to one percent of the appraised value of the property but not less than \$10,000. If applied, this exemption effectively results in a \$10,000 tax exemption for all residential homestead property valued at \$1 million or less.

The City’s current tax rate is \$0.45750 per \$100 of valuation. *See* <http://www.cedarparktexas.gov/how-do-i-learn-more-about/how-property-taxes-are-calculated>. Under the City’s adopted \$10,000 minimum exemption, \$490,000 of a \$500,000 appraised property would be taxed, resulting in a \$2,241.75 tax bill. Under a \$5,000 minimum exemption, the same property (but \$495,000 taxable) would incur \$2,264.63 in City property taxes.

S.W. at 203; *Graham v. City of Fort Worth*, 75 S.W.2d 930, 933 (Tex. App.—Eastland 1934, writ ref'd) (holding that cities may not adopt exemptions other than or different from those prescribed in the Constitution).

You also ask “whether an appraisal district or chief appraiser is legally authorized to disregard or modify a local residential homestead property tax exemption adopted by a local taxing unit.” Request Letter at 1. The Tax Code establishes a tax appraisal district in each county and makes the district responsible for appraising all property in the district for ad valorem tax purposes. See TEX. TAX CODE § 6.01(a)–(b). The appraisal district board of directors appoints a chief appraiser, who serves as chief administrator of the appraisal office. *Id.* § 6.05(c). Serving as a chief appraiser requires becoming certified as a registered professional appraiser under section 1151.160 of the Occupations Code. *Id.* § 6.05(c). The Legislature charged the Texas Commission of Licensing and Regulation with adopting standards of professional practice and minimum requirements for certification of these registrants. TEX. OCC. CODE §§ 1151.103, .160(a); see also *id.* § 1151.002(7-a) (defining “Commission” for purposes of chapter 1151). Pursuant to these rules, registered professional appraisers may not “engage in an official act that is . . . in violation of law.” 16 TEX. ADMIN. CODE § 94.100(4) (Tex. Dep’t of Licensing & Regulation, Code of Ethics).

With regard to the chief appraiser’s specific duties, each year the chief appraiser must “prepare and certify to the assessor for each taxing unit . . . the appraisal roll . . . that lists the property taxable by the unit.” TEX. TAX CODE § 26.01(a). The chief appraiser of the appraisal district in which the property is located has a statutory duty to determine, in the first instance, whether property is tax exempt. *Id.* § 11.45(a) (“The chief appraiser shall determine . . . each applicant’s right to an exemption.”); see also 34 TEX. ADMIN. CODE § 9.3034(b)(5) (Comptroller of Pub. Accounts, Notice of Exemption Application Requirement) (requiring a chief appraiser to provide notice when “the chief appraiser is required to cancel a granted exemption if he discovers any reason that the exemption should not have been granted”). Thus, the chief appraiser must determine which exemptions each property receives as authorized under the law in order to prepare the certified rolls of taxable property. The appraiser does not have authority to disregard or modify a lawfully adopted residential homestead property tax exemption ordinance. But to the extent a taxing unit adopts an unlawful exemption, the appraiser maintains a legal and ethical duty to determine that the exemption is inapplicable to the extent it violates the law.

S U M M A R Y

Subsection 11.13(n) of the Tax Code provides that if a municipality adopts a tax exemption percentage that produces an exemption of less than \$5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of \$5,000 of the appraised value. Because article VIII, section 1-b(e) of the Texas Constitution and the Legislature establish a legislatively-defined floor for the exemption in an amount of \$5,000, a court would likely conclude that a home-rule municipality lacks authority to increase the floor above \$5,000. Municipalities desiring to increase the homestead exemption must do so by raising the tax exemption percentage, up to twenty percent, as authorized in the Constitution.

The Legislature charged the chief appraiser with determining an individual's right to a property tax exemption, and the Commission of Licensing and Regulation prohibits appraisers from engaging in an official act that violates the law. If a taxing unit adopts an unlawful exemption, the appraiser maintains both a legal and ethical duty to determine that the exemption is inapplicable to the extent it violates the law.

Very truly yours,



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