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## **ATTORNEY GENERAL OPINIONS**

*Last Updated: November 16, 2009*

### **Opinion No. GA-0740**

October 13, 2009

Issues: referendum on frequency of reappraisals

The Webb County Attorney asked the Attorney General whether an appraisal district or its constituent taxing units could hold a referendum election on the question of limiting the frequency of reappraisals to once every three years. The Attorney General explained that it is an appraisal district's board of directors that has the responsibility for developing a plan for periodic reappraisals. Neither the Tax Code nor any other statute authorizes an election on this issue, even if people sign petitions calling for the election. An appraisal district's directors could adopt a plan to reappraise property only once every three years. Under § 23.23, the minimum required frequency for reappraisals is once every three years, and an appraisal district could adopt that minimum as its reappraisal plan. The Attorney General declined to offer advice on the wisdom or desirability of any reappraisal plan or on the effects that a particular plan might have on school-district value studies.

### **Opinion No. GA-0724**

July 9, 2009

Issues: eligibility of property for tax increment financing

A city created a reinvestment zone for purposes of tax increment financing. A member of the city council owned an interest in a real property in the new zone. He conveyed his interest in the property to his children but retained the right to the net proceeds from any future sale of that interest in the property. Section 312.204 of the Tax Code provides that property is ineligible for tax increment financing (and tax abatements) if it is owned or leased by a member of the governing body of the municipality that created the reinvestment zone. The Attorney General was asked to consider whether the council member in question should be considered an owner of the property by virtue of his retained interest in sales proceeds from the property. If he were considered an owner, the property would not be eligible for tax increment financing.

The Attorney General concluded that the council member was not an owner of the property. He did not have legal or equitable title to the property, and he had no control over the property. He had only an interest in the proceeds if the property were ever sold. The Attorney General noted that the council member still had an *interest* in the property because a change in the value of the property would also change the value of his retained interest in the proceeds of a sale. The Code, however, does not prohibit tax increment financing merely because a member of the governing body has an *interest* in a property in a reinvestment zone. Thus, the property was eligible for tax increment financing.

**Opinion No. GA-0724**

June 29, 2009

Issues: contract for collection of special assessments

A public Improvement district (PID) levied special assessments against various properties to pay for public improvements. The PID wanted to contract with the appraisal district or with another local government to have the other entity collect its special assessments. The Attorney General was asked whether such a contract would be legal. He concluded that the contract was not authorized under the Property Tax Code. Section 6.24 allows a taxing unit to contract with another taxing unit or with an appraisal district for the assessment and/or collection of *ad valorem* taxes. Special assessments are not *ad valorem* taxes even though they are subject to many of the same rules that govern the collection of taxes (e.g. penalties, interest and liens). “An *ad valorem* property tax is imposed throughout the taxing jurisdiction for the general support of its government, while a special assessment is imposed only upon the property that is specially benefited by the improvement, and its amount is based on the special benefits accruing to the property.”

The Attorney General also considered the Interlocal Cooperation Act (Chapter 791 Government Code), which allows a local government to contract with another local government “to perform governmental functions and services.” Functions covered by the Act include “administrative functions,” defined as “functions normally associated with the routine operation of a government, including tax . . . collection.” The collection of special assessments is an administrative function. The Act provides, however, that one local government can contract to provide a service for another local government only if the first local government is authorized to perform the service for itself. An appraisal district could not contract to collect a PID’s special assessments because the appraisal district cannot levy or collect special assessments of its own. A local government that could levy and collect its own special assessments could contract to collect a PID’s special assessments.

**Opinion No. GA-0719**

June 2, 2009

Issues: lawyer providing tax-collection and other services to taxing unit

A school district contracted with a lawyer for the collection of its delinquent taxes. The lawyer also acted as an unpaid advisor to the school board on other matters. A district taxpayer claimed that the arrangement was improper. After considering the arrangement, the Attorney General concluded that the lawyer was not an officer or employee of the school district and was not affected by the conflict-of-interest laws that apply to a local government's officers and employees. The Attorney General did not reach a conclusion concerning whether the lawyer's uncompensated services to the school board violated §33.07 because he did not know all the relevant facts. He did not think that the arrangement violated any other laws. He declined to consider whether the arrangement might violate any of the State Bar's ethical rules for lawyers because that would be the job of the Bar's Committee on Professional Ethics.

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