

constituted entities independent from the cities and counties within their borders; the McLennan County Appraisal District was neither a city nor a county for purposes of the constitutional provision. *Hoppenstein Props. v. McLennan County Appraisal Dist.*, No. 07-13-00035-CV, 2014 Tex. App. LEXIS 5413 (Tex. App. Amarillo May 20, 2014).

Provisions of Tex. Tax Code Ann. §§ 6.01, 6.03, 23.01, 25.21 expressly provide the necessary authority for an appraisal review board to ensure that the mineral interests of a county are appraised based on market value, unreduced by fraud, and for local taxing units to bring a challenge, if necessary, to insist that the appraisal review board do so. Therefore, the court issued a writ of mandamus directing a district court to vacate its order denying pleas to jurisdiction and to dismiss an action brought by local taxing units alleging that certain companies owning oil properties in the county committed fraud and conspiracy with respect to the valuation of the oil properties for ad valorem tax purposes. Under Tex. Const. art. V, § 8, the district court did not have subject matter jurisdiction because the legislature had provided that the claim had to be heard before the appraisal review board. In re *ExxonMobil Corp.*, 153 S.W.3d 605, 162 Oil & Gas Rep. 115, 2004 Tex. App. LEXIS 7811 (Tex. App. Amarillo Aug. 26, 2004, no pet.).

When a company challenged the appraisal of its spaghetti

sauce plant, it was not a party to the taxing unit challenge proceedings, and as an individual taxpayer, it was not entitled to notice of the proceedings. *Lamar County Appraisal Dist. v. Campbell Soup Co.*, 93 S.W.3d 642, 2002 Tex. App. LEXIS 8502 (Tex. App. Texarkana Dec. 3, 2002, no pet.).

ASSESSMENT METHODS & TIMING. — Unilateral contract between employer and retirees in no way bargained away the employer's ability to appraise property; the contract with the retirees did not, in any way, prohibit the employer from performing its public duties. *Davidson v. McLennan County Appraisal District*, No. 10-11-00061-CV, 2012 Tex. App. LEXIS 7482 (Tex. App. Waco Aug. 30, 2012), reh'g denied, No. 10-11-00061-CV, 2012 Tex. App. LEXIS 10445 (Tex. App. Waco Oct. 24, 2012), review denied, No. 12-0943, 2013 Tex. LEXIS 252 (Tex. Mar. 29, 2013).

VALUATION. — Appraisal district's inconsistent positions with regards to an energy company's untimely application for an open-space agricultural appraisal did not bar it from refusing to act because estoppel did not generally apply to governmental entities, and there was no showing of any exceptional circumstances that warranted otherwise. *City of San Antonio v. Bastrop Cent. Appraisal Dist.*, 275 S.W.3d 919, 2009 Tex. App. LEXIS 309 (Tex. App. Austin Jan. 16, 2009, no pet.).

ATTORNEY GENERAL OPINIONS

Tax Appraisals.

An appraisal district and its participating taxing units are not authorized to submit an issue to the voters for an election to require a particular appraisal schedule, whether initiated by

petition or otherwise. Sections 23.01, 23.23, and 25.18 of the Tax Code do not prohibit conducting appraisals every third year rather than annually. 2009 Tex. Op. Att'y Gen. GA-0740, 2009 Tex. AG LEXIS 60.

Sec. 6.02. District Boundaries.

- (a) The appraisal district's boundaries are the same as the county's boundaries.
- (b) This section does not preclude the board of directors of two or more adjoining appraisal districts from providing for the operation of a consolidated appraisal district by interlocal contract.
- (c) to (g) [Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(2), effective January 1, 2008.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 14, 167(a), effective January 1, 1982; am. Acts 1983, 68th Leg., ch. 117 (S.B. 433), § 1, effective May 17, 1983; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 14, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 391 (H.B. 2885), § 13, effective August 26, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.05, effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.72, effective September 1, 1997; am. Acts 2007, 80th Leg., ch. 648 (H.B. 1010), §§ 1, 5(2), effective January 1, 2008.

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ENERGY & UTILITIES LAW Oil, Gas & Mineral Interests

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county.

Devon Energy Prod., L.P. v. Hockley County Appraisal Dist., 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

EVIDENCE Procedural Considerations Burdens of Proof

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. *Devon Energy Prod., L.P. v. Hockley County Appraisal Dist.*, 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

TAX LAW State & Local Taxes Real Property Tax

General Overview. — Where a mineral lease crossed county lines, a county appraisal district incorrectly valued the

minerals for purposes of ad valorem taxation by calculating the percentage of surface acres in the county and applying that percentage to the mineral interest; its burden under Tex. Tax Code Ann. § 21.01 to prove the situs of the taxable property allowed it to tax only minerals actually in the county, in accordance with the provisions of Tex. Const. art. VIII, § 11 and Tex. Const. art. VIII, § 20 for property to be assessed at fair market

value in the county where situated, and of Tex. Tax Code Ann. § 6.01(a), (b) and Tex. Tax Code Ann. § 6.02(a) for an appraisal district in each county. *Devon Energy Prod., L.P. v. Hockley County Appraisal Dist.*, 178 S.W.3d 879, 169 Oil & Gas Rep. 78, 2005 Tex. App. LEXIS 9177 (Tex. App. Amarillo Nov. 3, 2005, no pet.).

ATTORNEY GENERAL OPINIONS

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Jurisdiction.
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Jurisdiction.

Despite the enactment of House Bill 1010 by the Eightieth Legislature, an appraisal district operating in overlapping territory by operation of Tex. Tax Code Ann. § 6.02(b) retains authority to hear and determine pending corrective motions and taxpayer protests concerning property in that territory that relate to the 2007, or prior, tax year. 2008 Tex. Op. Att'y Gen. GA-0631, 2008 Tex. AG LEXIS 45.

Savings Clause.

After the 2007 legislation that altered the legal framework for appraising property for ad valorem taxation in taxing units located in more than one county, an appraisal district is still responsible for litigation filed against it prior to January 1, 2008, and involving property that is no longer in its appraisal district; the general savings clause continues in effect relevant portions of Tex. Tax Code Ann. § 6.02, such that a taxing district has continuing authority to defend itself in the pending litigation, and a taxing unit has a continuing obligation to pay the related costs. 2008 Tex. Op. Att'y Gen. GA-0590, 2008 Tex. AG LEXIS 2.

Sec. 6.025. Overlapping Appraisal Districts; Joint Procedures [Repealed].

Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(3), effective January 1, 2008.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 186 (H.B. 623), § 1, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 1357 (H.B. 670), § 1, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 250 (H.B. 1037), § 1, 2, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 455 (H.B. 703), § 1, effective January 1, 2004; am. Acts 2003, 78th Leg., ch. 1041 (H.B. 1082), § 1, effective January 1, 2004.

ATTORNEY GENERAL OPINIONS

Overlapping Districts.

With respect to property lying in overlapping appraisal districts, section 6.025(d) of the Tax Code requires the chief appraiser of each of the overlapping districts to enter in the

appraisal records the lowest values, appraised and market, listed by any of the overlapping districts. 2004 Tex. Op. Att'y Gen. GA-0283.

Sec. 6.03. Board of Directors.

(a) The appraisal district is governed by a board of directors. Five directors are appointed by the taxing units that participate in the district as provided by this section. If the county assessor-collector is not appointed to the board, the county assessor-collector serves as a nonvoting director. The county assessor-collector is ineligible to serve if the board enters into a contract under Section 6.05(b) or if the commissioners court of the county enters into a contract under Section 6.24(b). To be eligible to serve on the board of directors, an individual other than a county assessor-collector serving as a nonvoting director must be a resident of the district and must have resided in the district for at least two years immediately preceding the date the individual takes office. An individual who is otherwise eligible to serve on the board is not ineligible because of membership on the governing body of a taxing unit. An employee of a taxing unit that participates in the district is not eligible to serve on the board unless the individual is also a member of the governing body or an elected official of a taxing unit that participates in the district.

(b) Members of the board of directors other than a county assessor-collector serving as a nonvoting director serve two-year terms beginning on January 1 of even-numbered years.

(c) Members of the board of directors other than a county assessor-collector serving as a nonvoting director are appointed by vote of the governing bodies of the incorporated cities and towns, the school districts, the junior college districts, and, if entitled to vote, the conservation and reclamation districts that participate in the district and of the county. A governing body may cast all its votes for one candidate or distribute them among candidates for any number of directorships. Conservation and reclamation districts are not entitled to vote unless at least one conservation and reclamation district in the district delivers to the chief appraiser a written request to nominate and vote on the board of directors by June 1 of each odd-numbered year. On receipt of a request, the chief appraiser shall certify a list by June 15 of all eligible conservation and reclamation districts that are imposing taxes and that participate in the district.

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit participating in two or more districts is entitled to vote in each district in which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district.

(e) The chief appraiser shall calculate the number of votes to which each taxing unit other than a conservation and reclamation district is entitled and shall deliver written notice to each of those units of its voting entitlement before October 1 of each odd-numbered year. The chief appraiser shall deliver the notice:

(1) to the county judge and each commissioner of the county served by the appraisal district;

(2) to the presiding officer of the governing body of each city or town participating in the appraisal district, to the city manager of each city or town having a city manager, and to the city secretary or clerk, if there is one, of each city or town that does not have a city manager;

(3) to the presiding officer of the governing body of each school district participating in the district and to the superintendent of those school districts; and

(4) to the presiding officer of the governing body of each junior college district participating in the district and to the president, chancellor, or other chief executive officer of those junior college districts.

(f) The chief appraiser shall calculate the number of votes to which each conservation and reclamation district entitled to vote for district directors is entitled and shall deliver written notice to the presiding officer of each conservation and reclamation district of its voting entitlement and right to nominate a person to serve as a director of the district before July 1 of each odd-numbered year.

(g) Each taxing unit other than a conservation and reclamation district that is entitled to vote may nominate by resolution adopted by its governing body one candidate for each position to be filled on the board of directors. The presiding officer of the governing body of the unit shall submit the names of the unit's nominees to the chief appraiser before October 15.

(h) Each conservation and reclamation district entitled to vote may nominate by resolution adopted by its governing body one candidate for the district's board of directors. The presiding officer of the conservation and reclamation district's governing body shall submit the name of the district's nominee to the chief appraiser before July 15 of each odd-numbered year. Before August 1, the chief appraiser shall prepare a nominating ballot, listing all the nominees of conservation and reclamation districts alphabetically by surname, and shall deliver a copy of the nominating ballot to the presiding officer of the board of directors of each district. The board of directors of each district shall determine its vote by resolution and submit it to the chief appraiser before August 15. The nominee on the ballot with the most votes is the nominee of the conservation and reclamation districts in the appraisal district if the nominee received more than 10 percent of the votes entitled to be cast by all of the conservation and reclamation districts in the appraisal district, and shall be named on the ballot with the candidates nominated by the other taxing units. The chief appraiser shall resolve a tie vote by any method of chance.

(i) If no nominee of the conservation and reclamation districts receives more than 10 percent of the votes entitled to be cast under Subsection (h), the chief appraiser, before September 1, shall notify the presiding officer of the board of directors of each conservation and reclamation district of the failure to select a nominee. Each conservation and reclamation district may submit a nominee by September 15 to the chief appraiser as provided by Subsection (h). The chief appraiser shall submit a second nominating ballot by October 1 to the conservation and reclamation districts as provided by Subsection (h). The conservation and reclamation districts shall submit their votes for nomination before October 15 as provided by Subsection (h). The nominee on the second nominating ballot with the most votes is the nominee of the conservation and reclamation districts in the appraisal district and shall be named on the ballot with the candidates nominated by the other taxing units. The chief appraiser shall resolve a tie vote by any method of chance.

(j) Before October 30, the chief appraiser shall prepare a ballot, listing the candidates whose names were timely submitted under Subsections (g) and, if applicable, (h) or (i) alphabetically according to the first letter in each candidate's surname, and shall deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote.

(k) The governing body of each taxing unit entitled to vote shall determine its vote by resolution and submit it to the chief appraiser before December 15. The chief appraiser shall count the votes, declare the five candidates who receive the largest cumulative vote totals elected, and submit the results before December 31 to the governing body of each taxing unit in the district and to the candidates. For purposes of determining the number of votes received by the candidates, the candidate receiving the most votes of the conservation and reclamation districts is considered to have received all of the votes cast by conservation and reclamation districts and the other candidates are considered not to have received any votes of the conservation and reclamation districts. The chief appraiser shall resolve a tie vote by any method of chance.

(l) If a vacancy occurs on the board of directors other than a vacancy in the position held by a county assessor-collector serving as a nonvoting director, each taxing unit that is entitled to vote by this section may nominate by resolution adopted by its governing body a candidate to fill the vacancy. The unit shall submit the name of its nominee to the chief appraiser within 45 days after notification from the board of directors of the existence of the vacancy, and the chief appraiser shall prepare and deliver to the board of directors within the next five days a list of the nominees. The board of directors shall elect by majority vote of its members one of the nominees to fill the vacancy.

(m) [Repealed by Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(4), effective January 1, 2008.]

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), §§ 15, 167(a), effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 1, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 270 (H.B. 268), § 1, effective August 31, 1987; am. Acts 1989, 71st Leg., ch. 1123 (H.B. 2301), § 2, effective January 1, 1990; am. Acts 1991, 72nd Leg., ch. 20 (S.B. 351), § 15, effective August 26, 1991; am. Acts 1991, 72nd Leg., ch. 371 (H.B. 864), § 1, effective

September 1, 1991; am. Acts 1993, 73rd Leg., ch. 347 (S.B. 7), § 4.06, effective May 31, 1993; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 6.73, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1039, § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 705 (H.B. 834), § 1, effective January 1, 2000; am. Acts 2003, 78th Leg., ch. 629 (H.B. 2043), effective June 20, 2003; am. Acts 2007, 80th Leg., ch. 648 (H.B. 1010), § 5(4), effective January 1, 2008; am. Acts 2013, 83rd Leg., ch. 1161 (S.B. 359), § 1, effective June 14, 2013.

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CONSTITUTIONAL LAW

Equal Protection

Scope of Protection. — Judgment that denied a municipal utility district’s request to declare Tex. Tax Code Ann. § 6.03(c), (d), (f), (h), (i) unconstitutional was affirmed because a political subdivision did not have any equal protection rights; equal protection rights were vested in persons. *Colony Municipal Utility Dist. v. Appraisal Dist. of Denton County*, 626 S.W.2d 930, 1982 Tex. App. LEXIS 3784 (Tex. App. Fort Worth Jan. 13, 1982, writ ref’d n.r.e.).

GOVERNMENTS

Local Governments

Finance. — Appraisal districts were created by statute and constituted political subdivisions of the State and constituted entities independent from the cities and counties within their borders; the McLennan County Appraisal District was neither a city nor a county for purposes of the constitutional provision. *Hoppenstein Props. v. McLennan County Appraisal Dist.*, No. 07-13-00035-CV, 2014 Tex. App. LEXIS 5413 (Tex. App. Amarillo May 20, 2014).

TAX LAW

State & Local Taxes

Personal Property Tax

General Overview. — Court affirmed judgment dismissing

the appeal of a property valuation protest for want of jurisdiction because under Tex. Tax Code Ann. §§ 6.01 and 6.03, taxpayer gave notice of appeal to the wrong entity. *Ganassi v. Fort Bend Cty. Appraisal Dist.*, 1987 Tex. App. LEXIS 6792 (Tex. App. Houston 1st Dist. Mar. 26, 1987).

Three-fourths of county taxing units was not authorized by Tex. Tax Code Ann. § 6.03 to change method of selecting board of director members for local tax appraisal district because state legislature provided a clear formula concerning voting entitlement. *Huffman v. Arlington*, 619 S.W.2d 425, 1981 Tex. App. LEXIS 3815 (Tex. Civ. App. Fort Worth June 18, 1981, writ ref’d n.r.e.).

REAL PROPERTY TAX

Assessment & Valuation

General Overview. — Appraisal districts were created by statute and constituted political subdivisions of the State and constituted entities independent from the cities and counties within their borders; the McLennan County Appraisal District was neither a city nor a county for purposes of the constitutional provision. *Hoppenstein Props. v. McLennan County Appraisal Dist.*, No. 07-13-00035-CV, 2014 Tex. App. LEXIS 5413 (Tex. App. Amarillo May 20, 2014).

Provisions of Tex. Tax Code Ann. §§ 6.01, 6.03, 23.01, 25.21 expressly provide the necessary authority for an appraisal review board to ensure that the mineral interests of a county are appraised based on market value, unreduced by fraud, and for local taxing units to bring a challenge, if necessary, to insist that the appraisal review board do so. Therefore, the court issued a writ of mandamus directing a district court to vacate its order denying pleas to jurisdiction and to dismiss an action brought by local taxing units alleging that certain companies owning oil properties in the county committed fraud and conspiracy with respect to the valuation of the oil properties for ad valorem tax purposes. Under Tex. Const. art. V, § 8, the district court did not have subject matter jurisdiction because the legislature had provided that the claim had to be heard before the appraisal review board. In *re ExxonMobil Corp.*, 153 S.W.3d 605, 162 Oil & Gas Rep. 115, 2004 Tex. App. LEXIS 7811 (Tex. App. Amarillo Aug. 26, 2004, no pet.).

ATTORNEY GENERAL OPINIONS

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Anti-Nepotism Rule.

Texas Tax Code section 6.035(a) does not apply when an appraisal district board member is married to an employee of the appraisal district. The words in section 6.035(a), “is engaged in the business of appraising property for compensation for use in proceedings under this title,” refer to an individual who appraises property for commercial profit. Consequently, a tax assessor-collector is eligible to serve as a nonvoting member of the appraisal district board of directors under Section 6.03(a) despite her marriage to an appraisal district employee. 2005 Tex. Op. Att’y Gen. GA-0375.

Dates are Directory.

The selection process for appointing members of the appraisal districts’ boards of directors set forth in section 6.03 of the Tax Code is not governed by the Texas Election Code. The dates set

forth in subsections 6.03(f) and (g) are directory and not mandatory. A taxing unit may not cast its voting entitlement for a person other than one nominated and named on the ballot. 1984 Tex. Op. Att’y Gen. JM-166.

Definition of “Employee”.

An attorney who has contracted with a taxing unit to collect its delinquent taxes is not an “employee” under section 6.03(a) of the Tax Code and is not ineligible under that provision to be a director of the appraisal district which includes that taxing unit. 1989 Tex. Op. Att’y Gen. JM-1060 (Modified by LO-89-70).

Quorum.

Under the provisions of sections 6.03(a) and 6.04(a) of the Tax Code, an assessor-collector who is a nonvoting member of an appraisal district board is counted in determining the presence of a quorum. Such individual may in turn serve as chairman or secretary of the board. An appraisal district board may determine by rule whether to permit the assessor-collector to make and second motions. Attorney General Opinion DM-160 (1992) is overruled to the extent that it conflicts with this conclusion. 2002 Tex. Op. Att’y Gen. JC-0580.

Sec. 6.031. Changes in Board Membership or Selection.

(a) The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the district before August 15, may increase the number of members on the board of directors of the district to not more than 13, change the method or procedure for appointing the members, or both, unless the governing body of a taxing unit that is entitled to vote on the appointment of board members adopts a resolution opposing the change, and files it with the board of directors before September 1. If a change is rejected, the board shall notify, in writing, each taxing unit participating in the district before September 15.

(b) The taxing units participating in an appraisal district may increase the number of members on the board of directors of the district to not more than 13, change the method or procedure for appointing the members, or both, if the governing bodies of three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the change. However, a change under this subsection is not valid if it reduces the voting entitlement of one or more taxing units that do not adopt a resolution proposing it to less than a majority of the voting entitlement under Section 6.03 of this code or if it reduces the voting entitlement of any taxing unit that does not adopt a resolution proposing it to less than 50 percent of its voting entitlement under Section 6.03 of this code and if that taxing unit's allocation of the budget is not reduced to the same proportional percentage amount, or if it expands the types of taxing units that are entitled to vote on appointment of board members.

(b-1) If an appraisal district increases the number of members on the board of directors of the district or changes the method or procedure for appointing the members as provided by this section, the board of directors by resolution shall provide for the junior college districts that participate in the appraisal district to collectively participate in the selection of directors in the same manner as the school district that imposes the lowest total dollar amount of property taxes in the appraisal district among all of the school districts with representation in the appraisal district. A resolution adopted under this section is not subject to rejection by a resolution opposing the change filed with the board of directors by a taxing unit under Subsection (a).

(c) An official copy of a resolution under this section must be filed with the chief appraiser of the appraisal district after June 30 and before October 1 of a year in which board members are appointed or the resolution is ineffective.

(d) Before October 5 of each year in which board members are appointed, the chief appraiser shall determine whether a sufficient number of eligible taxing units have filed valid resolutions proposing a change for the change to take effect. The chief appraiser shall notify each taxing unit participating in the district of each change that is adopted before October 10.

(e) A change in membership or selection made as provided by this section remains in effect until changed in a manner provided by this section or rescinded by resolution of a majority of the governing bodies that are entitled to vote on appointment of board members under Section 6.03 of this code.

(f) A provision of Section 6.03 of this code that is subject to change under this section but is not expressly changed by resolution of a sufficient number of eligible taxing units remains in effect.

(g) For purposes of this section, the conservation and reclamation districts in an appraisal district are considered to be entitled to vote on the appointment of appraisal district directors if:

- (1) a conservation and reclamation district has filed a request to the chief appraiser to nominate and vote on directors in the current year as provided by Section 6.03(c); or
- (2) conservation and reclamation districts were entitled to vote on the appointment of directors in the appraisal district in the most recent year in which directors were appointed under Section 6.03.

HISTORY: Enacted by Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 16, effective January 1, 1982; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 2, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 1123 (H.B. 2301), § 3, effective January 1, 1990; am. Acts 2013, 83rd Leg., ch. 1161 (S.B. 359), § 2, effective June 14, 2013.

Sec. 6.032. [Blank].**Sec. 6.033. Recall of Director.**

(a) The governing body of a taxing unit may call for the recall of a member of the board of directors of an appraisal district appointed under Section 6.03 of this code for whom the unit cast any of its votes in the appointment of the board. The call must be in the form of a resolution, be filed with the chief appraiser of the appraisal district, and state that the unit is calling for the recall of the member. If a resolution calling for the recall of a board member is filed under this subsection, the chief appraiser, not later than the 10th day after the date of filing, shall deliver a written notice of the filing of the resolution and the date of its filing to the presiding officer of the governing body of each taxing unit entitled to vote in the appointment of board members.

(b) On or before the 30th day after the date on which a resolution calling for the recall of a member of the board is filed, the governing body of a taxing unit that cast any of its votes in the appointment of the board for that member may vote to recall the member by resolution submitted to the chief appraiser. Each taxing unit is entitled to the same number of votes in the recall as it cast for that member in the appointment of the board. The governing body of the taxing unit calling for the recall may cast its votes in favor of the recall in the same resolution in which it called for the recall.

(c) Not later than the 10th day after the last day provided by this section for voting in favor of the recall, the chief appraiser shall count the votes cast in favor of the recall. If the number of votes in favor of the recall equals or exceeds a majority of the votes cast for the member in the appointment of the board, the member is recalled and ceases to be a member of the board. The chief appraiser shall immediately notify in writing the presiding officer of the appraisal district board of directors and of the governing body of each taxing unit that voted in the recall election of the outcome of the recall election. If the presiding officer of the appraisal district board of directors is the member whose recall was voted on, the chief appraiser shall also notify the secretary of the appraisal district board of directors of the outcome of the recall election.

(d) If a vacancy occurs on the board of directors after the recall of a member of the board under this section, the taxing units that were entitled to vote in the recall election shall appoint a new board member. Each taxing unit is entitled to the same number of votes as it originally cast to appoint the recalled board member. Each taxing unit entitled to vote may nominate one candidate by resolution adopted by its governing body. The presiding officer of the governing body of the unit shall submit the name of the unit's nominee to the chief appraiser on or before the 30th day after the date it receives notification from the chief appraiser of the result of the recall election. On or before the 15th day after the last day provided for a nomination to be submitted, the chief appraiser shall prepare a ballot, listing the candidates nominated alphabetically according to each candidate's surname, and shall deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote. On or before the 15th day after the date on which a taxing unit's ballot is delivered, the governing body of the taxing unit shall determine its vote by resolution and submit it to the chief appraiser. On or before the 15th day after the last day on which a taxing unit may vote, the chief appraiser shall count the votes, declare the candidate who received the largest vote total appointed, and submit the results to the presiding officer of the governing body of the appraisal district and of each taxing unit in the district and to the candidates. The chief appraiser shall resolve a tie vote by any method of chance.

(e) If the board of directors of an appraisal district is appointed by a method or procedure adopted under Section 6.031 of this code, the governing bodies of the taxing units that voted for or otherwise participated in the appointment of a member of the board may recall that member and appoint a new member to the vacancy by any method adopted by resolution of a majority of those governing bodies. If the appointment was by election, the method of recall and of appointing a new member to the vacancy is not valid unless it provides that each taxing unit is entitled to the same number of votes in the recall and in the appointment to fill the vacancy as it originally cast for the member being recalled.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 273 (H.B. 1202), § 1, effective August 26, 1985; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 5, effective September 1, 1987 (renumbered from Sec. 6.032).

Sec. 6.034. Optional Staggered Terms for Board of Directors.

(a) The taxing units participating in an appraisal district may provide that the terms of the appointed members of the board of directors be staggered if the governing bodies of at least three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the staggered terms. A change to staggered terms may be adopted only if the method or procedure for appointing board members is changed under Section 6.031 of this code to eliminate or have the effect of eliminating cumulative voting for board members as provided by Section 6.03 of this code. A change to staggered terms may be proposed concurrently with a change that eliminates or has the effect of eliminating cumulative voting.

(b) An official copy of a resolution providing for staggered terms adopted by the governing body of a taxing unit must be filed with the chief appraiser of the appraisal district after June 30 and before October 1 of a year in which board members are to be appointed, or the resolution is ineffective.

(c) Before October 5 of each year in which board members are to be appointed, the chief appraiser shall determine whether a sufficient number of taxing units have filed valid resolutions proposing a change to staggered terms for the change to take effect. Before October 10 the chief appraiser shall notify each taxing unit participating in the district of a change that is adopted under this section.

(d) A change to staggered terms made under this section becomes effective beginning on January 1 of the next even-numbered year after the chief appraiser determines that the change has been adopted. The entire board of directors shall be appointed for that year without regard to the staggered terms. At the earliest practical date after January 1 of that year, the board shall determine by lot which of its members shall serve one-year terms and which shall serve two-year terms in order to implement the staggered terms. If the board consists of an even number of board members, one-half of the members must be designated to serve one-year terms and one-half shall be designated to serve two-year terms. If the board consists of an odd number of board members, the number of members designated to serve two-year terms must exceed by one the number of members designated to serve one-year terms.

(e) After the staggered terms have been implemented as provided by Subsection (d) of this section, the appraisal district shall appoint annually for terms to begin on January 1 of each year a number of board members equal to the number of board members whose terms expire on that January 1, unless a change in the total number of board members is adopted under Section 6.031 of this code to take effect on that January 1.

(f) If a change in the number of directors is adopted under Section 6.031 of this code in an appraisal district that has adopted staggered terms for board members, the change must specify how many members' terms are to begin in

even-numbered years and how many members' terms are to begin in odd-numbered years. The change may not provide that the number of members whose terms are to begin in even-numbered years differs by more than one from the number of members whose terms are to begin in odd-numbered years.

(g) A change to staggered terms made as provided by this section may be rescinded by resolution of a majority of the governing bodies that are entitled to vote on appointment of board members under Section 6.03 of this code. To be effective, a resolution providing for the rescission must be adopted by the governing body and filed with the chief appraiser after June 30 and before October 1 of an odd-numbered year. If the required number of resolutions are filed during that period, the chief appraiser shall notify each taxing unit participating in the district that the rescission is adopted. If the rescission is adopted, the terms of all members of the board serving at the time of the adoption expire on January 1 of the even-numbered year following the adoption, including terms of members who will have served only one year of a two-year term on that date. The entire board of directors shall be appointed for two-year terms beginning on that date.

(h) If an appraisal district that has adopted staggered terms adopts or rescinds a change in the method or procedure for appointing board members and the change or rescission results in a method of appointing board members by cumulative voting, the change or rescission has the same effect as a rescission of the change to staggered terms made under Subsection (g) of this section.

(i) If a vacancy occurs on the board of directors of an appraisal district that has adopted staggered terms for board members, the vacancy shall be filled by appointment by resolution of the governing body of the taxing unit that nominated the person whose departure from the board caused the vacancy, and the procedure for filling a vacancy provided by Section 6.03 of this code does not apply in that event.

HISTORY: Enacted by Acts 1985, 69th Leg., ch. 601 (S.B. 79), § 1, effective June 14, 1985; am. Acts 1987, 70th Leg., ch. 59 (S.B. 469), § 4, effective September 1, 1987; am. Acts 1987, 70th Leg., ch. 167 (S.B. 892), § 5.01(a)(51), effective September 1, 1987 (renumbered from Sec. 6.032); am. Acts 1997, 75th Leg., ch. 1039 (S.B. 841), § 3, effective January 1, 1998.

Sec. 6.035. Restrictions on Eligibility and Conduct of Board Members and Chief Appraisers and Their Relatives.

(a) An individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district; or

(2) owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless:

(A) the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Section 33.02; or

(B) a suit to collect the delinquent taxes is deferred or abated under Section 33.06 or 33.065.

(a-1) **[Effective until January 1, 2020]** An individual is ineligible to serve on an appraisal district board of directors if the individual has engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district at any time during the preceding five years.

(a-1) **[Effective January 1, 2020]** An individual is ineligible to serve on an appraisal district board of directors if the individual has engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district at any time during the preceding three years.

(b) A member of an appraisal district board of directors or a chief appraiser commits an offense if the board member continues to hold office or the chief appraiser remains employed knowing that an individual related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the board member or chief appraiser is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district in which the member serves or the chief appraiser is employed. An offense under this subsection is a Class B misdemeanor.

(c) A chief appraiser commits an offense if the chief appraiser refers a person, whether gratuitously or for compensation, to another person for the purpose of obtaining an appraisal of property, whether or not the appraisal is for ad valorem tax purposes. An offense under this subsection is a Class B misdemeanor.

(d) An appraisal performed by a chief appraiser in a private capacity or by an individual related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to the chief appraiser may not be used as evidence in a protest or challenge under Chapter 41 or an appeal under Chapter 42 concerning property that is taxable in the appraisal district in which the chief appraiser is employed.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 4, effective September 1, 1989; am. Acts 1991, 72nd Leg., ch. 561 (H.B. 1345), § 43, effective August 26, 1991; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 5.95(27), effective September 1, 1995; am. Acts 2001, 77th Leg., ch. 1430 (H.B. 490), § 1, effective September 1, 2001; am. Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 4, effective June 14, 2013; am. Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 16, effective January 1, 2020.

ATTORNEY GENERAL OPINIONS

Analysis

Anti-Nepotism Rule.
Qualifications.

Anti-Nepotism Rule.

Texas Tax Code section 6.035(a) does not apply when an appraisal district board member is married to an employee of the appraisal district. The words in section 6.035(a), "is engaged in the business of appraising property for compensation for use in proceedings under this title," refer to an individual who appraises property for commercial profit. Consequently, a tax assessor-collector is eligible to serve as a nonvoting member of the appraisal district board of directors under 6.03(a) despite her marriage to an appraisal district employee. 2005 Tex. Op. Att'y Gen. GA-0375.

Qualifications.

Tex. Tax Code Ann. § 6.035(a) disqualifies from employment as a chief appraiser an individual who is related within the second degree by consanguinity "to an individual who is engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district;" whether a chief appraiser's son is, in particular circumstances, "engaged in the business of appraising property for compensation for use in proceedings under [title 1, Tax Code] or of representing property owners for compensation in proceedings under [title 1, Tax Code] in the appraisal district" is a question of fact. 2008 Tex. Op. Att'y Gen. GA-0627, 2008 Tex. AG LEXIS 39.

Sec. 6.036. Interest in Certain Contracts Prohibited.

(a) An individual is not eligible to be appointed to or to serve on the board of directors of an appraisal district if the individual or a business entity in which the individual has a substantial interest is a party to a contract with:

(1) the appraisal district; or

(2) a taxing unit that participates in the appraisal district, if the contract relates to the performance of an activity governed by this title.

(b) An appraisal district may not enter into a contract with a member of the board of directors of the appraisal district or with a business entity in which a member of the board has a substantial interest.

(c) A taxing unit may not enter into a contract relating to the performance of an activity governed by this title with a member of the board of directors of an appraisal district in which the taxing unit participates or with a business entity in which a member of the board has a substantial interest.

(d) For purposes of this section, an individual has a substantial interest in a business entity if:

(1) the combined ownership of the individual and the individual's spouse is at least 10 percent of the voting stock or shares of the business entity; or

(2) the individual or the individual's spouse is a partner, limited partner, or officer of the business entity.

(e) In this section, "business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or other entity recognized by law.

(f) This section does not limit the application of any other law, including the common law relating to conflicts of interest, to an appraisal district director.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 5, effective September 1, 1989.

Sec. 6.037. Participation of Conservation and Reclamation Districts in Appraisal District Matters.

In this title, a reference to the taxing units entitled to vote on the appointment of appraisal district board members includes the conservation and reclamation districts participating in the appraisal district, without regard to whether the conservation and reclamation districts are currently entitled to do so under Section 6.03(c). In a provision of this title other than Section 6.03 or 6.031 that grants authority to a majority or other number of the taxing units entitled to vote on the appointment of appraisal district directors, including the disapproval of the appraisal district budget under Section 6.06 and the disapproval of appraisal district board actions under Section 6.10, the conservation and reclamation districts participating in the appraisal district are given the vote or authority of one taxing unit. That vote or authority is considered exercised only if a majority of the conservation and reclamation districts take the same action to exercise that vote or authority. Otherwise, the conservation and reclamation districts are treated in the same manner as a single taxing unit that is entitled to act but does not take any action on the matter.

HISTORY: Enacted by Acts 1989, 71st Leg., ch. 1123 (H.B. 2301), § 4, effective January 1, 1990; am. Acts 1990, 71st Leg., 6th C.S., ch. 12 (S.B. 51), § 2(28), effective September 6, 1990 (renumbered from Sec. 6.035).

Sec. 6.04. Organization, Meetings, and Compensation.

(a) A majority of the appraisal district board of directors constitutes a quorum. At its first meeting each calendar year, the board shall elect from its members a chairman and a secretary.

(b) The board may meet at any time at the call of the chairman or as provided by board rule, but may not meet less often than once each calendar quarter.

(c) Members of the board may not receive compensation for service on the board but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties as provided by the budget adopted by the board.

(d) The board shall develop and implement policies that provide the public with reasonable opportunity to appear before the board to speak on any issue under the jurisdiction of the board. Reasonable time shall be provided during each board meeting for public comment on appraisal district and appraisal review board policies and procedures, and a report from the taxpayer liaison officer if one is required by Section 6.052.

(e) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board.

(f) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and the appropriate taxing jurisdictions.

(g) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1980; am. Acts 1983, 68th Leg., ch. 262 (H.B. 532), § 1, effective August 29, 1983; am. Acts 1989, 71st Leg., ch. 796 (H.B. 1464), § 6, effective September 1, 1989.

ATTORNEY GENERAL OPINIONS

Quorum.

Under the provisions of sections 6.03(a) and 6.04(a) of the Tax Code, an assessor-collector who is a nonvoting member of an appraisal district board is counted in determining the presence of a quorum. Such individual may in turn serve as chairman or

secretary of the board. An appraisal district board may determine by rule whether to permit the assessor-collector to make and second motions. Attorney General Opinion DM-160 (1992) is overruled to the extent that it conflicts with this conclusion. 2002 Tex. Op. Att'y Gen. JC-0580.

Sec. 6.05. Appraisal Office.

(a) Except as authorized by Subsection (b) of this section, each appraisal district shall establish an appraisal office. The appraisal office must be located in the county for which the district is established. An appraisal district may establish branch appraisal offices outside the county for which the district is established.

(b) The board of directors of an appraisal district may contract with an appraisal office in another district or with a taxing unit in the district to perform the duties of the appraisal office for the district.

(c) The chief appraiser is the chief administrator of the appraisal office. Except as provided by Section 6.0501, the chief appraiser is appointed by and serves at the pleasure of the appraisal district board of directors. If a taxing unit performs the duties of the appraisal office pursuant to a contract, the assessor for the unit is the chief appraiser. To be eligible to be appointed or serve as a chief appraiser, a person must be certified as a registered professional appraiser under Section 1151.160, Occupations Code, possess an MAI professional designation from the Appraisal Institute, or possess an Assessment Administration Specialist (AAS), Certified Assessment Evaluator (CAE), or Residential Evaluation Specialist (RES) professional designation from the International Association of Assessing Officers. A person who is eligible to be appointed or serve as a chief appraiser by having a professional designation described by this subsection must become certified as a registered professional appraiser under Section 1151.160, Occupations Code, not later than the fifth anniversary of the date the person is appointed or begins to serve as chief appraiser. A chief appraiser who is not eligible to be appointed or serve as chief appraiser may not perform an action authorized or required by law to be performed by a chief appraiser, including the preparation, certification, or submission of any part of the appraisal roll. Not later than January 1 of each year, a chief appraiser shall notify the comptroller in writing that the chief appraiser is either eligible to be appointed or serve as the chief appraiser or not eligible to be appointed or serve as the chief appraiser.

(d) Except as provided by Section 6.0501, the chief appraiser is entitled to compensation as provided by the budget adopted by the board of directors. The chief appraiser's compensation may not be directly or indirectly linked to an increase in the total market, appraised, or taxable value of property in the appraisal district. Except as provided by Section 6.0501, the chief appraiser may employ and compensate professional, clerical, and other personnel as provided by the budget, with the exception of a general counsel to the appraisal district.

(e) The chief appraiser may delegate authority to his employees.

(f) The chief appraiser may not employ any individual related to a member of the board of directors within the second degree by affinity or within the third degree by consanguinity, as determined under Chapter 573, Government Code. A person commits an offense if the person intentionally or knowingly violates this subsection. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$1,000.

(g) The chief appraiser is an officer of the appraisal district for purposes of the nepotism law, Chapter 573, Government Code. An appraisal district may not employ or contract with an individual or the spouse of an individual who is related to the chief appraiser within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

(h) The board of directors of an appraisal district by resolution may prescribe that specified actions of the chief appraiser relating to the finances or administration of the appraisal district are subject to the approval of the board.

(i) To ensure adherence with generally accepted appraisal practices, the board of directors of an appraisal district shall develop biennially a written plan for the periodic reappraisal of all property within the boundaries of the district