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OPINION COMMITTEE

JERI YENNE

CRIMINAL DISTRICT ATTORNEY  
BRAZORIA COUNTY

June 21, 2007

Honorable Greg Abbott  
Attorney General of Texas  
Attn: Opinion Committee  
300 W. 15<sup>th</sup> Street  
Austin, Texas 78701

FILE # ML-45253-07

I.D. # 45253

**RQ-0600-GA**

RE: CAN A TAX CEILING INCREASE FOR ONE EMERGENCY SERVICES DISTRICT BE CONSIDERED IN AN ELECTION SIMULTANEOUSLY WITH THE ELECTORATE CONSIDERING THE MERGER OF TWO SUCH DISTRICTS?

Dear General Abbott:

We have determined that there is interest in Brazoria County for merging the Brazoria County Emergency Services District No. 1 with the Brazoria County Emergency Services District No. 2. We have been asked to inquire about the mechanics of such merger in coordination with establishing the ad valorem tax ceiling for the proposed newly merged district. (See Rhodenbaugh letter attached hereto as Exhibit "A").

The Brazoria County Rural Fire Prevention District No. 1 was approved by an election held January 20, 2001 and canvassed by Order No. 20 dated January 23, 2001 of the Commissioners Court of Brazoria County, Texas. The commissioners' court subsequently entered a formal order establishing this district in Order No. 31 dated February 13, 2001 and appointed the initial five-member board of this district via Order No. 23 dated February 27, 2001. Senate Bill 1021 amended Texas Health and Safety Code §775.026 effective September 1, 2003 converting rural fire prevention districts to emergency services districts. Thus, the Brazoria County Rural Fire Prevention District No. 1 became the Brazoria County Emergency Services District No. 2. This conversion moved the constitutional provision governing the ad valorem tax ceiling on such a district from Article III, Section 48-d, which provided for a ceiling of three cents per 100 dollars property valuation to Article III, Section 48-e, which provided a ceiling of ten cents per 100 dollars property valuation. (See attached certified copies of Brazoria County Commissioners' Court orders attached hereto as Exhibits "B-1 through B-3").

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Angleton Area  
(979) 864-1230

Brazosport Area  
(979) 388-1230

Houston Area  
(281) 756-1230

Fax-Criminal Division  
(979) 864-1525

Fax-Civil Division  
(979) 864-1712

Fax-CPS Division  
(979)-849-8914

The Brazoria County Emergency Services District No. 1 was approved by an election held May 4, 2002 and which was canvassed in Court Order No. 2 dated May 9, 2002. The commissioners' court subsequently appointed the initial commissioners for the Brazoria County Emergency Services District No. 1 in Order No. 39 dated May 14, 2002 and formally declared that district's formation in Order No. 3 dated May 28, 2002. The order canvassing the election was amended by Order No. 22 dated June 26, 2002. This order cleared a dispute over the results of the election in the extraterritorial jurisdiction of West Columbia in favor of inclusion of that area into the new district. (See certified copies of Brazoria County Commissioners' Court orders attached hereto as Exhibits "B-4 through B-7").

The ballot used in the election authorizing the original Brazoria County Rural Fire Prevention District No. 1 included setting a tax ceiling of three cents per 100 dollars property valuation as set out by Texas Constitution Article III, Section 48-d. The ballot used in the election approving Brazoria County Emergency Services District No. 1 included setting a tax ceiling set out by Article III, Section 48-e of ten cents per 100 dollars property valuation. (See letter from Janice Evans, Brazoria County Elections Director attached hereto as Exhibit "C").

The present ad valorem tax rate of the Brazoria County Emergency Services District No. 1 is presently eight cents. (See Garrett correspondence). The ad valorem tax rate for the Brazoria County Emergency Services District No. 2 is three cents per hundred dollars property valuation. (See Garret correspondence attached hereto as Exhibit "D").

The Emergency Services District No. 1, which comprises an area which is contiguous with the City of West Columbia, its extraterritorial jurisdiction and some adjoining rural area, provides emergency medical services (especially ambulance service). The Emergency Services District No. 2 funds fire protection services for a large portion of Brazoria County located west of the Brazos River including the city and extraterritorial jurisdiction of the City of Brazoria, the City of West Columbia, the City of Jones Creek, the City of Sweeny, the extraterritorial jurisdiction of the City of Freeport and of Lake Jackson and adjoining rural areas. (The Emergency Services District No. 1 lies entirely within the territorial limits of Emergency Services District No. 2 -- see maps created by the Brazoria County Engineer's Office attached hereto as Exhibit "E").

As mentioned above, Brazoria County Emergency Services Districts No. 1 and 2 are considering a merger pursuant to Texas Health and Safety Code §775.024. This section provides for a merger if the board of each of the districts both favor the merger and the residents of each district approve the merger in an election held for that purpose. Texas Health and Safety Code §775.024(e) states that "the maximum tax rate that may be imposed by the merged district may not exceed the maximum tax rate authorized for any of the previous districts."

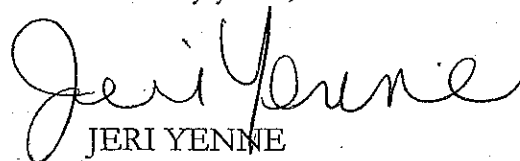
Texas Health and Safety Code §775.0745 sets out the mechanics for an election to increase the tax rate in an emergency services district. Subsection (a) states that "If the emergency services district's board "decides to increase the maximum tax rate of the district to any rate at or below the rate allowed by this chapter or Section 48-e, Article III, Texas Constitution, the board must order an election to authorize the increase. The proposition on the ballot must state the proposed maximum tax rate to be authorized at the election."

Obviously, the boards of the two districts must determine the potential tax rate ceiling for a newly merged district in their contemplation of such consolidation. Therefore, the undersigned requests from your office a written opinion pursuant to §402.043 of the Texas Government Code and the "Opinion Request Procedures" found at [www.oag.state.tx.us/opinopen/opin\\_request\\_proc](http://www.oag.state.tx.us/opinopen/opin_request_proc). Our questions are as follows:

1. Would the tax rate for a merged district under these circumstances be limited to three cents per hundred dollars property valuation?
2. Can a ballot concerning a merger of emergency services districts also include a provision authorizing an increase in the tax ceiling for ad valorem taxation for the district (Emergency Services District No. 2) with the lower tax ceiling? (Elections are currently held only twice a year and are costly - the cost of an election for Emergency Services District No. 2 ranges from \$8,197.49 to 23,126.40 depending on whether it can be conducted jointly with those of other governmental entities; see letter from Janice Evans, Brazoria County Elections Director attached hereto as Exhibit "F"; the election must be held at a uniform election date, presently the second Saturday in May or the first Tuesday after the first Monday in November, Texas Election Code §41.001(a), Texas Health and Safety Code §775.018(e)).
3. Alternatively, may all voters be presented (in addition to the proposed merger) with a proposition setting the maximum tax rate of the potentially merged district in excess of the provisions of Health & Safety Code §775.024(e) (in this case, above three cents per hundred dollars of property taxation)?
4. Must the proposition of merger be voted on separately or jointly with a proposition calling for a tax ceiling increase?

Looking forward to the response from your office, we are

Sincerely yours,

  
JERI YENNE

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enclosures