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OCT 10 2011 MIKE JACKSON

October 6, 2011 **OPINION COMMITTEE**

FILE # ML-46836-11
I.D. # 46836

RQ-1001-GA

The Honorable Greg Abbott
Attorney General of the State of Texas
Attn: Nancy Fuller
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

Re: Legal authority for a school district to send payments to the Texas Education Agency ("TEA") without voter approval

Dear Attorney General Abbott,

The Board of Trustees of Galveston Independent School District ("GISD") took Board action and asked me to write this letter on their behalf. The purpose of this letter is to inquire as to whether GISD can legally send certain payments to TEA under Chapter 41 of the Texas Education Code (the "Code") or any other applicable state law without voter approval.

GISD is a Chapter 41 district, meaning it has a "wealth per student" in excess of the "equalized wealth level", as those terms are defined by the Code. TEX. EDUC. CODE ANN. § 41.003. The Code provides that in such instances, GISD must elect one of five options to reduce its wealth per student: (1) consolidation with another district, (2) detachment of territory, (3) purchase of attendance credits, (4) education of nonresident students, or (5) tax base consolidation. TEX. EDUC. CODE ANN. § 41.003. In the past, virtually all Chapter 41 districts have chosen Option 3, Option 4, or a combination of both. Options 3, 4 and 5 all require voter approval.

On November 7, 2006, GISD held an election in which voters were asked to vote for or against two propositions relating to the above-mentioned options. One proposition would authorize Option 3 and the other proposition would authorize Option 4. However, both propositions failed to pass, leaving GISD without taxpayer authority to send any funds to either the state (Option 3) or to a non-Chapter 41 district (Option 4).

In 2006, the legislature authorized Chapter 41 districts to offset the cost required to reduce its wealth per student (the "Recapture Cost") against their additional state aid for tax reduction ("ASATR"). TEX. EDUC. CODE ANN. § 41.0041(c). The legislature subsequently adopted a provision permitting districts to forego the requirement of an election if the district's ASATR in a given year exceeds its Recapture Cost owed the same year. TEX. EDUC. CODE ANN. § 41.0041(e).

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For the 2010-2011 school year, GISD's Recapture Cost appears to exceed its ASATR. TEA has demanded that GISD pay certain amounts, but TEA does not offer any explanation or support in the calculation of amounts owed by GISD. Without such explanation or support, GISD cannot ascertain what portion, if any, of such amounts owed may constitute Recapture Cost. As you know, districts are not permitted to use their tax dollars collected outside of its boundaries without voter approval. While GISD does not dispute its Recapture Cost may exceed its ASATR or that GISD may otherwise owe the amounts requested by TEA, GISD does not believe it has the legal authority to send such funds to TEA without voter approval, at least to the extent such funds constitute Recapture Cost or other taxpayer funds.

The Code does not appear to specifically authorize GISD to pay any excess Recapture Cost to TEA. The Code provides that if the final amount of Recapture Cost exceeds the actual ASATR to which the district is entitled that year, the Commissioner of Education shall: (a) withhold the entire amount of ASATR, and (b) withhold the additional Recapture Cost from the ASATR to which the district is entitled for a subsequent school year; and the district is not required to take any further action to reduce its wealth per student for that year. TEX. EDUC. CODE ANN. § 41.0041(d). Accordingly, it appears that under the Code, TEA does not have the authority to demand payment of any Recapture Cost balance by GISD, but rather will carry a negative balance into the following school year and withhold such amount from GISD's ASATR. Of course, under such scenario, if GISD's ASATR is insufficient to offset the Recapture Cost next year, the negative balance would just continue to be carried forward until such time as the ASATR is sufficient.

The Code does not appear to expressly require GISD to hold another election. In fact, the TEA Manual for Districts Subject to Wealth Equalization (the "TEA Manual") provides that "*If your district has conducted a Chapter 41 election in the past, it need not conduct additional elections upon subsequent notifications.*" The TEA Manual is silent on the issue of whether that is still the case if the previous election did not authorize either Option 3 or Option 4. Similarly, the Code does not address what happens in the event a proposition is not approved by the voters. TEX. EDUC. CODE ANN. § 41.122(c).

GISD's goal is to comply with TEA's requests in a manner consistent with applicable law. Given that GISD's Recapture Cost has fluctuated wildly over the last few years, we expect that this could be an issue in subsequent school years as well. Accordingly, I respectfully request, on behalf of GISD, your interpretation of the Code and any other applicable law on the following issues:

- (1) whether GISD can legally pay funds to TEA for any Recapture Cost balance without voter approval, and
- (2) whether GISD can legally pay funds to TEA, without voter approval, without first establishing that such funds do not include taxpayer funds.

Thank you for your consideration.

Sincerely,



Mike Jackson
State Senator
District 11