



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 23, 1996

**The Honorable Tracey Bright
Ector County Attorney
Ector County Courthouse, Room 218
Odessa, Texas 79761**

Letter Opinion No. 96-099

Re: Whether a local taxing authority may, without foreclosing on the property, accept an amount that is less than the total amount of delinquent taxes owed on real property with "serious environmental problems" (RQ-880)

Dear Ms. Bright:

Under Texas Constitution article III, section 55, a political subdivision of the state may not release or extinguish all or part of a person's delinquent tax liability. No constitutional provision authorizes a political subdivision to reduce the amount of delinquent taxes due on real property on which hazardous waste improperly has been disposed. You effectively ask whether a political subdivision may reduce the amount of delinquent taxes due on real property with "serious environmental problems." We conclude that the constitution forbids it.

On behalf of several taxing authorities in Ector County,¹ you ask about the collection of delinquent ad valorem taxes on real property with hazardous waste problems. As you explain, the root of the taxing authorities' dilemma stems from the area's historical role in the production of oil and gas:

Ector County was once the center of oil and gas industries in Texas; consequently, during the late 1970s and early 1980s, numerous oil field industries operated within [the taxing authorities' boundaries]. Once the bust occurred during the mid[-]1980s, most of these companies either closed their doors or went bankrupt. During the highly prosperous years, environmental concerns were apparently non-existent. As a result, serious environmental hazards left behind by the oil and gas industries can be found on numerous tracts of land in Ector County.

¹You list specifically as the taxing authorities you represent the Ector County Independent School District, the Odessa Junior College District, the City of Odessa, the Ector County Hospital District, and Ector County.

... During the boom, the tracts were appraised at extremely high values which ... led to extremely high taxes. These taxes were frequently not paid Today, the appraised value has been lowered on many of these tracts; however, the delinquent taxes of the late 1970s and 1980s have attached, and the amount of delinquent taxes appearing on the tax roll on these problem tracts is astronomical.

As the economy in Ector County begins to improve, the taxing authorities have been approached by numerous individuals and companies to give them "a break" on the delinquent taxes which have accrued on these tracts, and in return for the tax break, the potential purchasers will under take [sic] the costs of cleaning up the environmental problems. Clearly, the rationale behind these companies' offers is that they are not going to pay \$100,000[,] \$200,000[,] or \$300,000 in delinquent taxes and then turn right around and pay that same amount or more in cleanup costs.

We will begin by placing your question in the context of the statutory tax assessment and collection procedures. In general, a taxing unit appraises at market value as of January 1 all taxable real property within the unit's boundaries.² Once real property is appraised, the taxing unit's assessor calculates the ad valorem taxes on the property by multiplying the taxing unit's tax rate by 100% of the property's appraised value, less any exemptions on the property.³ With exceptions not applicable here, taxes become delinquent if the taxpayer does not pay by February 1 of the year after the year in which the taxes are imposed.⁴

A taxing unit or units may sue to collect delinquent taxes either by foreclosing on the lien securing payment of the tax or by enforcing personal liability at any time after the tax becomes delinquent.⁵ In a suit to foreclose on the lien, the court will order that the real property be sold if the court finds in favor of the taxing units.⁶ If the officer selling the real property in accordance with the court order does not receive a sufficient bid, he or

²Tax Code § 23.01(a).

³See *id.* §§ 26.02, .09(b).

⁴*Id.* § 31.02; see *id.* §§ 31.02(b), .03, .04 (listing exceptions). A delinquent tax incurs a penalty of six percent for the first calendar month the tax is unpaid plus one percent for each additional month the tax is unpaid, up to a total of 12%. *Id.* § 33.01(a). Additionally, interest accrues on the delinquent tax at the rate of one percent for each month the tax is unpaid. *Id.* § 33.01(c).

⁵*Id.* § 33.41(a).

⁶*Id.* § 33.53.

she must bid the property off to one of the taxing units that is a party to the judgment.⁷ Generally, if a taxing unit purchases the property, it must resell the property for more than the market value specified in the court order or the total amount of judgments against the property, whichever is less, unless all other taxing units involved in the foreclosure action consent.⁸ After costs are paid, proceeds from the sale are distributed to all taxing units that had joined in the suit to satisfy the amount of taxes, penalties, and interest due each.⁹

You suggest that, under state and federal laws, a taxing unit that forecloses on real property for delinquent taxes may bear all or part of the liability for necessary environmental cleanup on the real property. You do not ask us to evaluate your interpretations of the environmental laws you cite, and we therefore assume your interpretations are correct.¹⁰ You ask only whether, where the real property on which delinquent taxes are owed is contaminated by toxic or hazardous waste, the taxing unit may reduce the amount of delinquent taxes owed rather than foreclose on the property. We limit our answer to this question.

Article III, section 55 of the Texas Constitution forbids the legislature to release or extinguish, or to authorize the release or extinguishing of, all or part of any person's indebtedness, liability, or obligation to the state, a county, political subdivision, or municipal corporation. The legislature may, however, release, extinguish, or authorize the release or extinguishing of delinquent taxes that have been due for at least ten years.¹¹ Delinquent

⁷*Id.* § 34.01(c).

⁸*Id.* § 34.05(b).

⁹*Id.* § 34.02(a). If the proceeds from the sale are insufficient to pay the costs, as well as the taxes, penalties, and interest due the taxing units, the taxing units' shares may be prorated. *See id.* § 34.02(b).

¹⁰We note that you believe a taxing unit would be liable for all or part of the cleanup costs under the state's Solid Waste Disposal Act, Health & Safety Code ch. 361. Under that act, any owner of a solid waste facility, including a governmental body, *see id.* § 361.003(23), is generally liable for the costs of cleaning up a solid waste release that endangers the public health and safety or the environment. *Id.* § 361.275(a); *see also id.* § 361.272(a). Nevertheless, a political subdivision is not responsible for cleanup costs if the subdivision acquired ownership or control of the facility through tax delinquency and the political subdivision did not cause or contribute to the release. *Id.* § 361.271(b). We note that, similarly, an analogous federal law, the Comprehensive Environmental Response, Compensation, and Liability Act (also known as "CERCLA"), 42 U.S.C. ch. 103, excludes from the definition of an owner or operator liable for cleanup costs a state or political subdivision that "acquired ownership or control involuntarily through . . . tax delinquency, . . . or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign." 42 U.S.C. § 9601(20)(D).

¹¹Tex. Const. art. III, § 55. Consistent with article III, section 55, the legislature has enacted Tax Code section 33.05(c), which permits a taxing unit to remove real property from the delinquent tax roll if the tax has been delinquent for 20 years. We assume the taxes about which you ask are less than 20 years delinquent.

taxes are a liability for purposes of article III, section 55.¹² Indeed, the section's principal purpose was to prevent the forgiveness of delinquent taxes.¹³

Article III, section 55 pertains not only to what the legislature may do, but it also has been construed to forbid any county, political subdivision, or municipal corporation from unilaterally releasing or extinguishing an indebtedness or liability without constitutional authority.¹⁴ Indeed, in Letter Opinion No. 95-090 this office applied article III, section 55 to conclude that a home-rule municipality in your county could not agree to abate delinquent taxes.¹⁵ In Letter Opinion No. 95-090 you asked this office whether the City of Odessa may abate a taxpayer's delinquent taxes on real property located within the city's enterprise zone, which the city had established under Local Government Code chapter 380.¹⁶ Because article III, section 55 of the Texas Constitution precludes a governmental body from releasing, in whole or in part, a taxpayer's delinquent tax liability, we could not construe Tax Code chapters 33 or 312 or Local Government Code chapter 380 to authorize the municipality to abate delinquent taxes.¹⁷ Moreover, we found no other constitutional provision that would authorize a municipality to abate delinquent taxes for economic development purposes.¹⁸

Likewise, we here conclude that article III, section 55 of the Texas Constitution prohibits a taxing unit from reducing the delinquent taxes due on the contaminated real property. Furthermore, we find no other constitutional provision that would authorize a taxing unit to reduce the amount of delinquent taxes due in this situation. We must, therefore, answer your question in the negative: the taxing units may not agree to settle for an amount of delinquent taxes that is less than the amount actually due.

¹²See *State v. Pioneer Oil & Ref. Co.*, 292 S.W. 869, 871 (Tex. Comm'n App. 1927, judgment adopted) (citing *City of Henrietta v. Eustis*, 26 S.W. 619, 620 (Tex. 1894); *Ollivier v. City of Houston*, 54 S.W. 940, 942 (Tex. Civ. App.-1899, no writ)).

¹³1 GEORGE D. BRADEN ET AL., *THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS* 270 (1977). See generally Tex. Const. art. III, § 55 Interp. Commentary (Vernon 1984).

¹⁴See, e.g., *Ollivier*, 54 S.W. at 943 (municipality); Attorney General Opinions V-862 (1949) at 2 (school district), O-4679 (1942) at 2-3 (county).

¹⁵Letter Opinion No. 95-090 (1995) at 6.

¹⁶*Id.* at 1.

¹⁷*Id.* at 2-3.


¹⁸*Id.* at 3. In particular, the letter opinion examined Texas Constitution article VIII, section 1-g, under which the legislature may authorize a taxing unit "to grant exemptions or other relief from ad valorem taxes on property located in a reinvestment zone for the purpose of encouraging development or redevelopment and improvement of the property." *Id.* at 3 (quoting Tex. Const. art. VIII, § 1-g).

We find the situation you face somewhat similar to the situation addressed in Attorney General Opinion O-930. That opinion considered a statute enacted by the Forty-sixth Legislature, in which the legislature empowered the commissioners court to reconsider original assessments on real property on which delinquent taxes were owed if, because the taxes were long overdue, "the accumulated delinquent taxes, with penalties, interest, and costs" totaled an amount that was "inequitable or confiscatory" to collect.¹⁹ Under the statute, in the event the commissioners court made this determination, the court might adjust the assessed values of the property.²⁰ The opinion viewed the statute, in its essence, as authorizing a commissioners court to "release and extinguish delinquent State and county taxes."²¹ Not only did the statute violate article III, section 55, but it also violated article VIII, sections 8 and 18 of the state constitution.²² The opinion drew this conclusion even though the value of the real property at issue was depressed, consistent with a "present industrial depression."²³

S U M M A R Y

In the absence of a constitutional provision to the contrary, article III, section 55 of the Texas Constitution prohibits a taxing unit from reducing the amount of delinquent taxes owed on real property with hazardous waste problems.

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

¹⁹Attorney General Opinion O-930 (1939) at 1 (quoting V.T.C.S. art. 7345d, *repealed* by Act of May 26, 1979, 66th Leg., R.S., ch. 841, § 6(a)(1), 1979 Tex. Gen. Laws 2217, 2329); *see also* Act of May 9, 1939, 46th Leg., R.S., ch. 17, § 1, 1939 Tex. Gen. Laws 659, 659-60 (enacting V.T.C.S. art. 7345d).

²⁰Attorney General Opinion O-930 (1939) at 1-2.

²¹*Id.* at 3.

²²*Id.*

²³*Id.*