



THE TEXAS HOUSE OF REPRESENTATIVES

CHAIRMAN Local Government Ways and Means

Transportation

Legislative Budget Board

FRED HILL

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OPINION COMMITTEE

FILE # ML-45248-07  
I.D. # 45248

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78701

RE: Attorney General Opinion Request

RQ-0596-GA

Dear Attorney General Abbott:

As Chair of the House Committee on Local Government Ways and Means, I am writing to request your opinion on the proper interpretation of Tax Code Section 1.111, as implemented by rules issued by the Comptroller of Public Accounts at 34 TAC §9.3044 and Comptroller of Public Accounts Forms 50-162-1 and 50-241-1 (copies attached). This statute, rule, and forms all relate to the process whereby a property owner may designate an agent to act on their behalf in numerous property tax matters.

It is clear that the majority of this body of law is designed to regulate the relationship between property owners and registered property tax consultants, who are governed by Occupations Code, Chapter 1152. For example, Tax Code Section 1.111(h) requires the Comptroller to "prescribe forms and adopt rules to facilitate compliance with this section." It goes on to require that the form used in designating an agent for single-family residential property occupied by the property owner include the following boldfaced type:

**"In some cases, you may want to contact your appraisal district or other local taxing units for free information and/or forms concerning your case before designating an agent."**

A tax consultant in the Houston area argues that the consultant may, in its form contingent fee agreement for employment with the property owner, have the property owner delegate to the consultant the authority to complete and sign the state prescribed form on behalf of the property owner. A copy of the form agreement used by the tax agent is attached. The Harris County Appraisal District has maintained for many years that the law does not permit such a broad delegation of authority and that the Appointment of Agent form must be signed by the property owner or other lawfully authorized person, which does not include tax agents. Please note that the process proposed by the tax consultant completely subverts legislative intent by denying the property owner the benefit of ever seeing the language prescribed by Section 1.111(h) or making any of the crucial decisions required to complete either Appointment of Agent form.

In an attempt to finally resolve the matter, the Comptroller instituted a rulemaking last year under the authority contained in Tax Code Section 1.111(h). The rulemaking was specifically designed to resolve the issue between the Harris County Appraisal District and the tax consultant. The required notice of the proposed amendment to 34 TAC §9.3044 was published in the September 1, 2006, issue of the Texas Register (See 31 TexReg 7099, attached). The Comptroller's explanation for the amendment stated that it was intended to "clarify that registered property tax consultants may not sign forms 50-162-1 and 50-241-1 on behalf of property owners." The proposed amendments were adopted effective October 31, 2006 (See 31 TexReg 8844, attached). Rule §9.3044(c) now states as follows:

The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. A person who is required to register as a property tax consultant under Occupation Code, Chapter 1152, may not sign form 50-162-1 or form 50-241-1 on behalf of a property owner. The property owner shall indicate the date the owner appoints the agent on the designation form. . . .

Attached are copies of e-mail exchanged between Mr. Lance Brown (Operations Manager of Novotny & Company, the tax consulting firm at issue) and Ms. Larrilyn Reissig (Deputy General Counsel of the Comptroller of Public Accounts). The e-mail appears to directly contradict 34 TAC §9.3044. It has always been my understanding that administrative bodies are bound to follow their own rules. Moreover, Tax Code Section 5.041(f) provides that "The comptroller may not advise a property owner, a property owner's agent, an appraisal district, or an appraisal review board on a matter that the comptroller knows is the subject of a protest to the appraisal review board." During this time period, Novotny & Company had many pending protests before the appraisal review board involving the validity of their agent appointment forms. It appears that advising a tax consultant in this manner while they have appeals pending might violate Section 5.041(f), Tax Code.

There are two question on which I ask for your opinion. First, does the Novotny Fee Agreement or a similar agreement lawfully allow a tax consultant to complete and execute an Appointment of Agent Form on behalf of a property owner, thereby denying the property owner the opportunity to see the language mandated by Section 1.111(h), Tax Code? Additionally, may the Comptroller advise a tax consultant on the impact of rules it has implemented on pending tax protests? I believe that several appraisal districts will be submitting briefs on this issue. Thank you for your consideration, and I look forward to hearing your opinion on this matter.

Sincerely,



Fred Hill  
Chairman, House Committee on Local Government Ways and Means

Enclosures: 8 Exhibits