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Pecos County Appraisal District v. Iraan-Sheffield Independent School District

Supreme Court of Texas - May 19, 2023 - S.W.3d - 2023 WL 3556711

School district petitioned for review of decision of county appraisal review board (ARB) denying school district's challenge to valuation of taxpayer's mineral-interest real property, alleging that taxpayer's property was erroneously omitted from appraisal for certain tax years.

The 83rd District Court granted taxpayer's motion to show authority, concluding that school district's attorney lacked authority to represent district because he was engaged under an allegedly void contingent-fee contract for appraisal litigation, and granted taxpayer's plea to the jurisdiction, concluding that school district's petition was "void and of no effect" and that district had thus failed to timely appeal the ARB's decision. School district appealed. The El Paso Court of Appeals reversed and remanded. Taxpayer petitioned for review, which was granted.

The Supreme Court held that:

- Statute authorizing a 20 percent contingency fee for attorneys hired to enforce collection of delinquent taxes did not expressly authorize school district to retain attorney on contingent-fee basis for appraisal litigation;
- Attorney's authority to represent school district in appraisal litigation was not authorized by Education Code;
- Texas law did not authorize school district to retain attorney on a contingent-fee basis for appraisal litigation;
- Attorney could not show his authority to represent school district by pointing to contingent-fee contract; and
- Proper remedy for failure to show authority was to give school district a reasonable opportunity either to modify its agreement with attorney or to retain other counsel on terms that were within school district's lawful authority.

School district's lawsuit seeking to require county appraisal district to raise its valuation of taxpayer's mineral-interest real property so that taxpayer would owe additional taxes, which had not yet been imposed, was not a suit to enforce collection of delinquent taxes, and thus statute authorizing a 20 percent contingency fee for attorneys hired to enforce collection of delinquent taxes did not expressly authorize school district to retain attorney on contingent-fee basis to bring appraisal litigation; there had been no taxes imposed based on heightened valuation school district desired, so there were no delinquent taxes to collect.

Actions of attorney hired by school district on a contingent-fee basis for representation in lawsuit seeking to increase appraisal for taxpayer's mineral-interest real property so as to impose additional taxes on taxpayer was not to assess or collect school district's taxes, which could have only taken place if appraisals were in fact increased, and thus attorney's authority to represent school district in appraisal litigation was not authorized by section of Education Code providing that board of

trustees of an independent school district may employ a person to assess or collect school district's taxes and may compensate the person as the board of trustees considers appropriate.

Texas law did not authorize school district to retain attorney on a contingent-fee basis for appraisal litigation seeking to increase valuation of taxpayer's mineral-interest real property; no authority could be implied from relevant statutes, and legislature had authorized taxing units to use contingent-fee agreements related to taxation in only one specific circumstance, to enforce collection of delinquent taxes, suggesting that law-making branch had not authorized taxing units to pursue appraisal litigation by engaging attorneys on a contingent-fee basis, but had not impliedly authorized such controversial contracts without saying so.

School district lacked power to retain attorneys on a contingent-fee basis to pursue appraisal litigation, and thus attorney hired by school district for appraisal litigation with respect to taxpayer's mineral-interest real property could not show his authority to represent school district by pointing to contingent-fee contract, which was an ultra vires act beyond school district's authority, on motion for attorney to show authority, in school district's challenge to valuation of taxpayer's property.

Proper remedy for failure to show authority by attorney hired by school district on contingent-fee contract for representation in appraisal litigation related to valuation of taxpayer's mineral-interest real property was not dismissal with prejudice of school district's claims challenging valuation, but rather was to give school district a reasonable opportunity either to modify its agreement with attorney or to retain other counsel on terms that were within school district's lawful authority; school district was not afforded a reasonable opportunity to hire another attorney or to adjust its arrangement with attorney, either of which would have cured problem identified by motion for attorney to show authority.