

June 21, 1979

Opinion No. MW26

Dear Mr. Bullock:

You asked two questions about the language of article 8, Section 1-BB of the Texas Constitution, which authorizes ad valorem tax exemptions for disabled persons. The governing bodies of certain political sub-divisions may provide a tax exemption on the homesteads of persons "who are under a disability for purposes of payment of disability insurance benefits under federal old age survivors and disability insurance for its successor"

Texas Constitution Article 8, Section 1-BB

You first ask:

"Does exemption include persons eligible under both federal old age and survivors and disability insurance program and supplemental security income programs, aid for the blind and the totally and permanently disable?"

The definition of disability provided at the statutes establishes this two programs differ slightly. Compare 42USC, Section 423D1 with 42 USC, Section 1382CA3A,B. We believe the language of Article 8, Section 1-3B of the Constitution clearly adopts the definition of disability included in the present Federal Old Age Survivor and Disability insurance benefits legislation or future versions of it.

You next ask:

"Must individuals actually be receiving benefits under either program to be eligible for exemption?"

In our opinion, Article 8, Section 1-BB does not require that the disabled individual actually receive benefits under the old age and survivors insurance provisions. A recipient of benefits under the federal act must fulfill requirements in addition to disability. He must be insured, must be under 65, and must have applied for disability insurance benefits. 42 USC, Section 423A1 - Article 8, Section 1-BB does not incorporate this additional requirements, in fact it permits a tax payer who is over 65 to receive the disability exemption, provided he does not receive an exemption for persons over 65.

"An eligible disabled person who is 65 years of age or older may not receive both exemptions from the same political sub-division in the same year, but may choose either if the sub-division has adopted both."

Texas Constitution Article 8, Section 1-BB - Article 8, Section 1-BB refers several times to the tax exemption for disabled persons. We believe this constitutional provision merely incorporates the definition of disability found in the old age and survivor act or its successor as a means of determining who is disabled for purposes of receiving the permissive homestead tax exemption.

Summary:

The residents homestead tax exemption authorized by Article 8, Section 1-BB of Texas Constitution may be provided that a person under a disability as defined by the federal old age and survivors disability act or its successor. The disabled tax payer need not receive benefits under the federal act in order to qualify for the homestead tax exemption.

Very truly yours,  
Mark White  
Attorney General of Texas