

CARLOS F. TRUAN
District 20
P. O. Box 5445
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# The Senate of The State of Texas Austin 78711

July 10, 1979

Committees:
EDUCATION
HUMAN RESOURCES
NATURAL RESOURCES

Subcommittees:
AGRICULTURE (Vice Chairman)
PUBLIC HEALTH

School Tax Assessor-Collector Independent School Districts 20th Senatorial District

Dear Tax Assessor-Collector:

My office has received numerous inquiries regarding the newly-authorized ad valorem school tax exemption. This exemption is now provided in the Texas Constitution as amended in November, 1978, and has been implemented by the Texas Legislature this year. House Bill 1060 grants all school taxpayers a \$5,000. exemption, and provides an additional \$10,000. exemption for the elderly and disabled, for school tax purposes only.

For clarification, I am enclosing the recent Attorney General Opinion MW-26 which states that "the disabled taxpayer need not receive benefits under the federal act in order to qualify for the homestead tax exemption." To be eligible for the exemption, a disabled taxpayer must only meet the requirements of the act as regards disability.

According to information received by this office from the Social Security Administration, "Disability" is defined as "a medically determinable physical or mental impairment which has lasted, or can be expected to last, for a continuous period of at least 12 months, or can be expected to result in death." This impairment must also prevent an individual from engaging in any substantial gainful employment or activity.

Since there has been much confusion generated about this matter, I strongly recommend and request that your office secure an extension to July 31 for the taxpayers to make application, instead of the present deadline of July 15. I also urge that extensive publicity be given this matter so that everyone concerned will be fully informed.

If you need any further information about this or any other matter, please feel free to contact my office for assistance. With best regards, I remain

Very truly yours, Oarlos 7. Trusan

Carlos F. Truan State Senator



### The Attorney General of Texas

June 21, 1979

## MARK WHITE Attorney General

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Honorable Bob Bullock Comptroller of Public Accounts LBJ State Office Building Austin, Texas 78774 Opinion No. MW-26

Re: Eligibility standards for the tax exemption provided disabled persons by article VIII, section 1-b(b) of the Texas Constitution.

Dear Mr. Bullock:

You ask two questions about the language in article VIII, section 1-b(b) of the Texas Constitution which authorizes ad valorem tax exemptions for disabled persons. The governing body of certain political subdivisions 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 or its successor....

Tex. Const. art. VIII, \$ 1-b(b).

You first ask:

Does the exemption include persons eligible under both the Federal Old-Age, Survivors, and Disability Insurance program [42 U.S.C. §§ 401-431] and Supplemental Security Income program's Aid to the Blind and Aid to the Totally and Permanently Disabled [42 U.S.C. §§ 1381-1383c].

The definitions of "disability" provided in the statutes establishing these two programs differ slightly. Compare 42 U.S.C. § 423(d)(1) with 42 U.S.C. § 1382c(a)(3)(A), (B). We believe the language of article VIII, section 1-b(b) of the Constitution clearly adopts the definition of disability included in the present Federal Old-Age, Survivors, 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 the exemptions?

In our opinion, article VIII, section 1-b(b) 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 sixty-five, and must have applied for disability insurance benefits. 42 U.S.C. § 423(a)(1). Article VIII, section 1-b(b) does not incorporate these additional requirements. It in fact permits a taxpayer who is over sixty-five to receive the disability exemption provided he does not also receive an exemption for persons over sixty-five:

An eligible disabled person who is sixty-five (65) years of age or older may not receive both exemptions from the same political subdivision in the same year but may choose either if the subdivision has adopted both.

Tex. Const. art. VIII, \$1-b(b). Article VIII, section 1-b refers several times to tax exemptions for disabled persons. We believe this constitutional provision merely incorporates the definition of disability found in the Old Age and Survivors Act or its successor as a means of determining who is disabled for purposes of receiving the permissive homestead tax exemption.

### SUMMARY

The residence homestead tax exemption authorized by article VIII, section 1-b(b) of the Texas Constitution may be provided persons who are under a disability as defined by the Federal Old Age, Survivors, and Disability Insurance Act or its successors. The disabled taxpayer 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** 

JOHN W. FAINTER, JR. First Assistant Attorney General

TED L. HARTLEY
Executive Assistant Attorney General

Prepared by Susan Garrison Assistant Attorney General lier than with the first day of the first month after such seventeenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

#### Same; disability

### (d)(1) The term "disability" means-

- (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
- (B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

#### (2) For purposes of paragraph (1)(A)—

- (A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 402(e) or (f) of this title) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.
- (B) A widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 402(e) or (f) of this title) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.
- (3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.



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CFT/mt