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Blake Armstrong, P.C.
A Professional Corporation

January 12, 2023

Andrea Miller, Mayor
Tawnya Austin, City Manager
City of Payne Springs, Texas
19601 CR 2529
Mabank, Texas 75156

Via Email

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Re: Ad Valorem Tax/Voter Approval

Dear Mayor and Tawnya,

I provide the following opinion related to the City's recent passing of an ad valorem tax and the citizen petition seeking an election of said tax on the basis that it exceeds the voter approval rate. Specifically, the petitioners allege that due to the fact that the City had no ad valorem tax in 2022 (or any preceding year) that any tax imposed for tax year 2023 would exceed the voter approval rate and require an election.

An election to approve an ad valorem tax is required when the tax rate adopted exceeds the voter approval rate. The qualified voters of a taxing unit, by petition, may require that an election be held to determine whether to reduce the tax rate adopted by the governing body of the taxing unit for the current tax year to the voter approval tax rate.

The "voter-approval tax rate" is calculated as follows: (no-new-revenue maintenance and operations rate x 1.035, plus current debt rate, plus unused increment rate).

The above-referenced formula for calculating the voter-approval tax rate is dependent upon a no-new-revenue maintenance and operations rate. Pursuant to the Tax Code, a no-new-revenue tax rate is calculated with the following formula: (last year's levy minus lost property levy) \ (current total value minus new property value). By definition, the only way in which a no-new-revenue rate can be calculated is if there was an actual tax levy for the preceding year. Once again, calculating this rate is a requirement to calculate a voter approval rate. The term "last year's levy" is defined in the Tax Code and specifically requires that an actual tax rate was adopted by the City Council for the preceding tax year, which would then produce an actual levy for the preceding tax year.

Based on the statutory calculations required to establish a voter approval rate, the City (or any taxing entity) must have had an actual tax levy with an adopted tax rate for the preceding year. Absent that, a voter approval rate cannot be established.

In addition to the above-referenced authority, the no-new-revenue maintenance and operations rate, which once again is required to establish a voter approval rate, may not include any new property that was not on the preceding tax year's roll. In theory, any and all property on the City's 2023 tax roll is "new property," as it was not on the City's tax roll for the preceding tax year, as no such roll existed.

Based on the above, the City will not have a legally recognized voter approval rate until tax year 2024. At such time, the City will have an actual preceding tax year with a levy/tax rate adopted that may then be used to accurately calculate a voter approval rate. The calculations established by statute to arrive at a voter approval rate are consistent with the requirement that the establishment and implementation of an ad valorem tax rate is a purely legislative function of the City Council, and not the electorate.

Mayor and Tawnya, I am happy to visit further regarding these issues if necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Blake Armstrong", with a stylized, sweeping flourish at the end.

Blake Armstrong

BA/tlh