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Charter school not entitled to tax exemption under recent ruling by Texas Supreme Court

June 24 — A public open-enrollment charter school in Galveston County is not entitled to a property tax exemption for property it subleases, according to a 6-3 decision earlier this month by the Texas Supreme Court. Charter schools often operate in leased facilities, and some have sought exemption from property taxes as a way to achieve tax parity with other types of public schools.

In the court [case](#), *Odyssey 2020 Academy v. Galveston Central Appraisal District*, Odyssey had requested an exemption under the Tax Code from property taxes of the property owners that it had contractually agreed to pay. It said its leased property should be considered property owned by the state, which under Tax Code, [sec. 11.11\(a\)](#) is exempt from taxation if used for a public purpose. Odyssey also pointed to Education Code [sec. 12.128](#), which says that property leased by a charter school with state funds is considered to be public property for all purposes under state law.

Texas Constitution, [Art. 8](#) requires certain tax exemptions and allows the Legislature to adopt others by statute. The court in Odyssey said the constitution “does not authorize an exemption for leased property that is privately owned but deemed public by statute” and that “ownership of leased property determines tax liability and the right to an exemption.”

Exempting from taxation a property owner who leases to a charter school could be accomplished by amending the constitution, the court said, noting that so far such a constitutional exemption has been allowed for a school, under [Art. 8, sec. 2](#), only when the property was “owned by a church or by a strictly religious society.”

The [dissent](#) in Odyssey argued that [Art. 11, sec. 9](#) of the Texas Constitution provides a tax exemption for property that is not owned by the government but that is “devoted exclusively to the use and benefit of the public.” According to the dissent, such an exemption encompasses charter schools like Odyssey.

In its regular session earlier this year, the 87th Texas Legislature enacted [HB 3610](#) by Gervin-Hawkins, which exempts from taxation the portion of real property leased to an open-enrollment charter school, school district, or community college district if it is used exclusively to operate the school or perform school functions, and it requires the owner to pass the tax savings on to the tenant. Supporters of the bill [said](#) it would help charter schools achieve tax parity with district schools. Critics said enacting such an exemption could reduce local revenue, with some suggesting it would require a constitutional amendment.

In 2019, the 86th Texas Legislature considered [HJR 31](#) by Murphy, a proposed constitutional amendment that would have added real property leased to a charter school to the types of property that the Legislature could by law exempt from taxation. It died in the House Calendars Committee. [HB 388](#) by Murphy, the enabling legislation for HJR 31, would have entitled a property owner to an exemption from taxation of the portion of real property that the person owned and leased to an open-enrollment charter school under certain conditions, including that it was used exclusively for educational functions. HB 388 was passed by the House but died in the Senate.

— *Laura Hendrickson*