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January 11, 1939

Mr. Morris Rolston
County Attorney, Titus County
Mt. Pleasant, Texas

Dear Mr. Rolston:

Opinion No. 0-46
Re: Effect of Sec. 13, Article VIII
State Constitution and Article
7345b R. C. S.

Your letter of January 5, 1939, requesting an opinion in regard to the effect of section 13, Article VIII of the State Constitution and the validity of Article 7345b of the Revised Civil Statutes of Texas, was duly received by this office.

This constitutional amendment, Section 13, Article VIII, is not self-executing. It merely directs the Legislature to put certain laws into effect. Whether or not a constitutional amendment is self-executing is expressed in 6 Ruling Case Law 57, as follows:

"A constitutional provision is self-executing where no legislation is necessary to give effect to it."

In 12 Corpus Juris, 729, it is said:

"Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed."

In Corpus Juris, 730, it is further said:

"Constitutional provisions are not self-executing if they merely indicate a line of policy or principles, without supplying the means by which such policy or principles are to be carried

into effect, or if the language of the constitution is directed to the legislature, or it appears from the language used and the circumstances of its adoption that subsequent legislation was contemplated to carry it into effect."

As this constitutional amendment is not self-executing it could not by itself repeal or otherwise affect previous legislation. It only gives the legislature power to do so in certain instances. This point of law is expressed in 12 Corpus Juris, 727, as follows:

"Constitutional provisions are sometimes so framed as to be inoperative until laws are passed putting them into effect, and in this case it is a general rule that existing statutes in conflict with the principle of such provisions remain in force until the necessary legislation is had."

The writer has not been able to find any Texas case directly on this point, but this is no doubt the Texas law in view of what was said in the case of Collins v. Tracy, 36 Tex. 547, as follows:

".... state Constitutions are made with reference to existing laws, which laws are not changed by the Constitution, except so far as they may be inconsistent with its provisions."

As far as we can find the Legislature has not complied with the command of this amendment. In other words, it has not set up a procedure by which land can be sold for taxes without a suit first being filed in court. This failure of the Legislature to pass such a law merely means that the amendment is still inoperative. It has happened in similar cases before. In the case of Wiederanders v. State, 64 Tex. 133, a suit had been brought in the District Court to escheat land, and the only authority for it was the constitutional provision which said that "the legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats." The Supreme Court held that as the legislature had failed to provide a method of procedure in escheats of this kind that the constitutional provision was inoperative, and it said:

"No officer of this state, however, has the right to institute a proceeding to have such a forfeiture declared, nor has any court within the state the jurisdiction to declare such a forfeiture, until the state through the legislature has declared the will of the state to enforce its right to have the forfeiture declared, and has provided the method by which this shall be done.

"The constitution itself contemplates that the legislature shall act, and shall put in motion and provide rules for the exercise of this right.

"It provides that 'the legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats.'

"The act under which this action was instituted neither declares the will of the state to enforce the forfeiture, nor provides a method by which it shall be done....

"No method having yet been provided by the legislature, it presents a case in which all jurists agree that the courts must wait the lead of the political authority before they can act."

In view of the above authorities, it is clear that the amendment in question did not repeal any statutes, and no legislation has been enacted in pursuance to it that has the effect of repealing any statutes.

Article 7345b, to which you refer, was passed by the 45th Legislature in 1937, after the above mentioned amendment was adopted; but as the amendment was inoperative Article 7345b was valid provided it would have been valid before the passage of this particular amendment.

Article 7345b, which provides for a method to collect taxes by filing of suit and foreclosure of lien, is authorized under Sections 1, 3, 11 and 15, Article VIII of the Constitution. Section 1, Article VIII provides:

"Taxation shall be equal and uniform.. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law."

Section 3, Article VIII provides:

"Taxes shall be levied and collected by general laws and for public purposes only."

Section 11, Article VIII provides:

"All property, whether owned by persons or corporations shall be assessed for taxation, and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties

to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer."

Section 15, Article VIII provides:

"The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide."

These last four quoted sections of Article VIII of the Constitution were in effect when the recent Section 13 of Article VIII was adopted in 1932; and they are still in effect and they directly authorize the procedure for collecting taxes by suit prescribed in Article 7345b, which was passed by the Legislature in 1937.

You refer to Articles 7326 to 7330, inclusive, which also provide a method of collecting taxes by suit, which articles were in effect when Article 7345b was passed in 1937; but those articles do not interfere in the operation of Article 7345b which is evident by the words of paragraph 13 of Article 7345b, which says:

"The provisions of this Act shall be cumulative of and in addition to all other rights and remedies to which any taxing unit may be entitled, but as to any proceeding brought under this Act, if any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern as to such proceeding."

Our answer to your first question is that the adoption of the present section 13, Article VIII of the Constitution of Texas did not repeal any prior laws on the collection of delinquent taxes.

Our answer to your second question is that Article

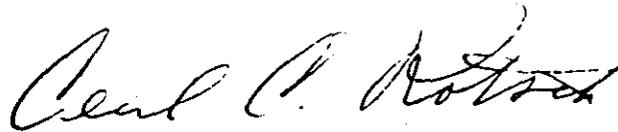
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7345b of the Revised Civil Statutes of Texas (Acts 1937, 45th Leg. p. 1494a, Ch.506) is valid and is not in violation of Section 13, Article VIII of the Constitution, and suits can be brought under this article in the District Court.

Yours very truly

ATTORNEY GENERAL OF TEXAS

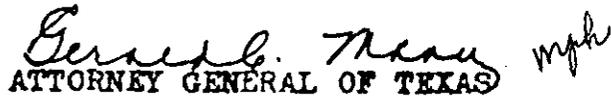
By



Assistant

CCR:BT

APPROVED:


ATTORNEY GENERAL OF TEXAS