



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 6, 1939

Mr. A. E. Hickerson
County Auditor
Montgomery County
Conroe, Texas

Dear Sir:

Opinion No. 0-540
Re: Whether district clerk must make
a collection of interest provided
in a compromise judgment for delin-
quent taxes.

This will acknowledge receipt of a copy of the judgment entered in the case of the State of Texas vs. George Botain, in the Special Ninth District Court of Montgomery County, Texas, February Term, A. D., 1939.

You ask an opinion of this Department as to whether or not it is the duty of the district clerk to make a collection of interest on a compromise judgment before releases can be issued thereon.

The copy of the judgment furnished us recites that the parties had reached an agreement as to the amount of taxes due plaintiff including penalty, interest, and costs of court and concluded with the following language:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the Plaintiff, State of Texas, do have an recover of and from Geo. Botain, the defendant in said cause, the sum of Eleven and 22/100 (\$11.22) Dollars, plus six (6%) per cent interest per annum from date until paid, being the full amount of taxes, interest and penalties due on said real estate above described, for all of the aforesaid years, as set out in This Decree and in Exhibit A, attached to Plaintiff's Original Petition.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that upon the payment of the sum of Eleven and ($\$11.22$) $22/100$ Dollars by the Defendant to the Plaintiff and the County of Montgomery, the tax judgment herein shall be declared satisfied and paid in full, and that the tax lien upon the above described property to secure the payment of said sum, shall be extinguished and satisfied in full for each and every year, as set out in Plaintiff's original Petition, and that the Plaintiff have its execution and order of sale."

It will be noted in the first paragraph hereinabove quoted that the recovery is for an amount of Eleven and $22/100$ ($\$11.22$) Dollars plus six (6%) per cent per annum from date until paid. The second paragraph above quoted provides that the payment of the sum of Eleven and $22/100$ ($\$11.22$) Dollars shall satisfy such judgment and makes no reference to the payment of interest. These two paragraphs, therefore, are apparently repugnant.

A consent judgment is^a written agreement and should be interpreted as a contract. See *Frazier vs. Hanlon Gasoline Company*, 29 SW 2nd 461. (Writ of error refused). In accordance with familiar rules of construction a judgment will be read as a whole. See 10 Tex. Jur. 282, and *Magnolia Petroleum Company vs. Caswell*, 1 SW 2nd 597 (Com. of App. re-hearing denied). If there are apparent repugnant clauses in a judgment by reason of which the meaning is obscure the clause first appearing will control. *Prince vs. Frost-Johnson Lumber Company*, 194 SW 181 (Writ of error refused).

Applying the above mentioned rules of construction to the judgment involved in this inquiry, it is the opinion of this Department and you are so advised that the six (6%) per cent interest provided in the first paragraph hereinabove quoted will prevail and govern

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this judgment and that it is the duty of the district clerk to make the collection of the interest therein provided for before releases can be properly issued by him.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Lloyd Armstrong
Assistant

LA:AW

APPROVED:

(sgd) GERALD C. MANN
ATTORNEY GENERAL OF TEXAS