



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 26, 1939

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-664

Re: Whether Comptroller can ratify fully executed delinquent tax contracts so as to permit electing attorney to be paid partly out of State's share of taxes collected

We are in receipt of your letter of April 25, 1939, advising that Mr. Sterling Williams, an attorney, has just collected by suit, delinquent taxes in the sum of One Thousand Eight Hundred Fifty-three Dollars (\$1853.00) for Borden County, being entirely for personal property on the insolvent rolls for the years 1933, 1934 and 1936, all from one man. The Commissioners' Court employed him to bring the suit, and the time being short, he filed suit immediately on word from them, sued for and recovered both State and county taxes, for which the Commissioners' Court agreed to pay him fifteen per cent (15%) as attorney's fees. The contract not having been approved by the Comptroller and by the Attorney General, the question is now submitted as to whether or not the Comptroller can ratify the action of the Commissioners' Court so that the State may now bear its prorata part of attorney's fees for the money actually turned in to the State on the case.

Article 7335, Revised Civil Statutes, makes provision for the Commissioners' Court of any county after thirty days notice to the county or district attorney to file delinquent tax suits and his failure to do so, to employ another attorney for the purpose of collecting delinquent State and county taxes for a percentage thereof.

Article 7335a, Revised Civil Statutes, provides that said contracts must be approved by both the Comptroller

Hon. Geo. H. Sheppard, April 26, 1939, Page 2

and the Attorney General of the State of Texas, both as to substance and to form and further provides that any contract made in violation of such act shall be void.

As said by the Supreme Court in the case of *White v. McGill*, 114 S. W. (2d) 860, a contract for the collection of taxes on personal property must find the support in some article of the statute to be valid. And, as held in that case, and *Easterwood v. Henderson County*, 62 S. W. (2d) 65, as well as *Sylvan Sanders Company v. Scurry County*, 77 S. W. (2d) 709, contracts for the collection of delinquent taxes made between commissioners' courts and attorneys must be approved by the Comptroller and the Attorney General, otherwise they are void. There is no provision in the statute for the Comptroller to ratify such contracts after they have been performed. As said by the Supreme Court in *Easterwood v. Henderson County*, supra:

"The power to provide for the collection of delinquent taxes and prescribe the compensation to be paid for the services rendered in that respect resides exclusively in the legislature."

Since Articles 7335 and 7335-a embody the only provisions for a collecting attorney to receive a part of the share collected for the State as compensation for his services, he must bring himself within the terms of those statutes to be entitled to be compensated by the State. There is no statute which directly or indirectly clothes the Comptroller with authority to compensate an attorney for services rendered by him in collecting taxes.

Our answer to your question, therefore, is in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

GRL:LM

APPROVED:

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS