



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 19, 1939

Honorable O. Kennedy
County Attorney
Bee County
Beeville, Texas

Dear Mr. Kennedy:

Opinion No. O-803
Re: Are abstract books assessable
for ad valorem taxes as per-
sonal property?

In seeking our opinion upon the above question by your letter of May 6, 1939, you attach a copy of an opinion of Honorable H. L. Williford, of date December 17, 1938, directed to Honorable George H. Sheppard, Comptroller of Public Accounts, and answering the above question negatively. You desire a reconsideration of this opinion.

Article 7145, Revised Civil Statutes, provides that "all property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed." Article 7147, Revised Civil Statutes, provides, in part, that "personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State whether the same be in or out of the state" and continues with the enumeration of certain species of personal property. There being no constitutional or statutory exemptions of abstract books as such, the only question before us is whether or not such books constitute "personal property" within the meaning of the above cited articles.

Your letter does not present a fact situation for our consideration, nor do we deem same necessary. It is to be assumed that the abstract books in question are those commonly compiled and kept in the orderly and profitable pursuit of the business of furnishing abstracts of title, and contain certain written and printed information which such business may be called upon to furnish respecting the title to real estate in the locality where they operate. These abstract

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books are prepared at considerable expense and are of great value to the owners thereof in that they constitute the working plant of a profitable business. It is commonly known that these books possess a value by reason of the facts contained therein and the use to which they may be put, rather than the intrinsic value of the books, themselves, which from a tax standpoint would be inconsequential.

There is a dearth of authorities upon this question in Texas, but as early as 1887 and before, the courts of other jurisdictions have concerned themselves with this question because the novelty of abstract books as articles of ownership has given rise to some doubts as to their legal character as property. In resorting to the decisions of other states for persuasive authority to support this opinion, we find in such states a contrariety of opinion, and it shall be our purpose to determine which of these two lines of decisions should be followed.

The early case of Dart v. Woodhouse, 40 Mich. 399, 29 Am. Rep. 44, while not involving a tax question, is important in determining the nature of abstract books as property, in that it held that "an execution levy made on a set of manuscript abstract books was of no validity, because the right of the proprietor of such manuscript to publish it or to keep it back from publication is not a property right but one which is purely incorporated, and attended with considerations of a nature entirely different from any involved in other rights." The principle of law announced in this case is followed by the same court in Perry v. City of Big Rapids, 34 N. W. 530, and Loomis v. City of Jackson, 90 N. W. 328. Both of these cases involve a tax question, and the case of Perry v. City of Big Rapids, which appears to be a leading case, holds that the provision in the constitution of Michigan which requires assessments to be made on property at its cash value, means not only what may be put to valuable uses, but what has a recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it, and hence manuscript books containing abstracts of land titles were not liable to taxation, as they had no intrinsic value but were valuable only for the information they contained and which is conveyed by consultation or abstracts made therefrom.

This holding by the Supreme Court of Michigan has

been directly overturned by later decisions by the Supreme Courts of three different states, and has been severely criticized in two of these decisions, wherein it was pointed out that the Michigan decision was by a divided court, and was based upon reasoning which though ingenious was unsatisfying.

The case of Leon Loan and Abstract Company v. Equalization Board of Leon et al, 53 N. W. 94, by the Supreme Court of Iowa, was severest in its condemnation of the Michigan cases hereinabove cited, and held that the abstract books, having an actual market value, and usable by anyone of ordinary intelligence as a means of profit, are personal property and liable therefore to taxation, notwithstanding their manuscript character, and the fact that they are valuable only for the information they contain, which must be obtained by consultation or extract therefrom. Similar disapproval of the Michigan cases is voiced by Freeman, in his work on Executions, Section 110.

The comparatively recent case of State v. St. Paul Abstract Company, 196 N. W. 932, by the Supreme Court of Minnesota in 1924, reasons very convincingly as follows:

"The abstract plant consists of abstracts of title to real property in Ramsey county, taken from the official public records and assembled in books with copious indexes, together with the articles of equipment used in connection therewith. The matter contained in such books is collected from the public records, and in no manner partakes of scientific discoveries, nor are they like the manuscripts of an author, or a copyright, as contended for.

"The general work of compiling these books is a mere copying of extracts from public records and assembling them in abstract books for convenience in furnishing abstracts of title to land in Ramsey county, to such persons as are in need of the same and willing to pay therefor. The mere fact that there was kept an index, with a secret key, thereto, changed the character of the property no more than would a Yale

lock on the outer door of a dwelling, with a key in the pocket of the occupant, change the domicile. In other words the fact that information contained in the card index is in the form of a secret code or indicia the key of which is known only to the members of the appellant, in no way changes the character of the property, in our view of the situation. Nor does the fact that the owners keep the abstracts of title prompted to date, by taking extracts from instruments recorded in the office of the register of deeds and assembling them in the abstract books, change the situation, other than to enhance the value of the plant.

"We are of the opinion, and hold, that books containing abstracts of land titles which have a recognized value, and which are kept and used as the basis of a business for profit, constitute taxable property. 26 R. C. L. 138, and cases therein cited."

It is our conclusion that the weight of authority, as well as sound reasoning, supports the view that abstract books, especially as prepared and maintained under modern conditions, constitute "personal property" within the meaning of Articles 7145 and 7147, Revised Civil Statutes of Texas, and are subject to taxation. 61 C. J. 192, 26 R. C. L. 138, 1 R. C. L. 90. State v. St. Paul Abstract Company, 196 N. W. 932, Leon Loan and Abstract Company v. Equalization Board of Leon et al, 53 N. W. 94, Booth Hanford Abstract Company v. Phelps, 36 P. 489, 23 L. R. A. 864. Washington Bank of Walla Walla v. Fidelity Abstract and Security Company, 15 Wash. 487, 37 L. R. A. 115.

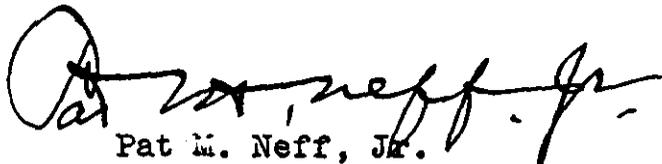
The opinion of this department adverted to at the outset, is grounded upon the minority rule announced in Perry

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v. City of Big Rapids, supra, and is accordingly overruled.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By 
Pat M. Neff, Jr.
Assistant

P.N:FL

APPROVED:


ATTORNEY GENERAL OF TEXAS