



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

Honorable T. M. Timble
First Assistant State Superintendent
Austin, Texas

Dear Sir:

Opinion No. O-1266

Re: Refunding of school taxes
paid to a school district
on property, which is lo-
cated outside of said
school district.

We are in receipt of your letter of August 10,
1939, in which you request the opinion of this depart-
ment on the following question:

"A tax payer who has property ad-
jacent to a school district has been
paying taxes for school purposes to
this adjacent district for the last
several years, believing that her
property was in this district. Now
it develops that the property is not
in this district, but in an adjoining
district which has no school tax. Can
we lawfully refund her taxes paid to
us, and, if so, what is the procedure?"

It is a general principle of law that taxes
which are voluntarily paid are not thereafter recoverable.
Arrott vs. Allegheny County, 194 At. 910 (Supreme Court of
Pennsylvania); Burley vs. Lindheimer County, 11 N. E. (2d)
926 N. W. 851. (Supreme Court of Nebraska); Atkins Guardian
vs. McCoy, 120 S. W. (2d) 1019 (Court of Appeals of Kentucky).
These cases make no distinction between a payment under a
mistake of law, or a payment under a mistake of fact by the
taxpayer.

In the case at hand, we have a situation where a
legal tax was paid by a taxpayer under a mistake of fact.

The taxpayer believed her property to be in the taxing district where it was assessed by the tax assessor for that district. There is a conflict of authority throughout the United States as to whether or not such a payment under a mistake of fact is a voluntary payment. Several cases have held the payment of school taxes on property not located within the taxing district to be voluntary, and, therefore, not recoverable by the taxpayer. *Wilson vs. Board of Commissioners of Allen County, et al.*, 162 Pac. 1158 (Supreme Court of Kansas); *Edwards vs. Board of Commissioners of Oklahoma County, et al.*, 36 Pac. (2d) 6 (Supreme Court of Oklahoma); *Walser, et al. vs. Board of Education of School District No. 1*, 42 N. E. 346 (Supreme Court of Illinois).

The better view seems to be, however, that the payment of taxes on property outside of a taxing district, under a mistake of fact, is not a voluntary payment, and are recoverable by the taxpayer.

"It is a well settled general rule that, if a wrongful or illegal tax is paid by the person assessed voluntarily and without compulsion, it cannot be recovered back in an action at law, or by way of set-off, unless there is some constitutional or statutory provision expressly or impliedly giving him such rights, although the tax is paid without compulsion, and this rule has been applied, even though payment was made under protest. But the rule does not apply to a tax paid on land wholly outside the taxing jurisdiction of the county levying the same." 61 C. J. 985.

"In many instances it seems that the mistake as to the correct tax district is, for practical purposes at least, one of fact; as where there is no uncertainty as to the location of legal boundaries, or as to the legal authority of the district in question, or the general regularity of the tax proceeding, but merely from factual forgetfulness or inadvertence in the listing of the property for taxation. In such cases the better view seems to be that there may be recovery if, under the circumstances, a denial of recovery would be unjust." 95 A.L.R. 1224.

A number of cases in other jurisdictions have allowed a recovery of taxes paid on property not within the taxing district even though the taxes were paid willingly by the taxpayer who believed his property to be within the taxing district. Churchill vs. Board of Trustees of Highland Park Graded School, 89 S. W. 122 (Court of Appeals of Kentucky); City of Indianapolis vs. Patterson, 14 N. E. 551 (Supreme Court of Indiana); Miller vs. City of Oneida, 272 N. Y. Supp. (Supreme Court of New York); In re: Wing, 295 N. Y. Supp. 336; Bridgeport Hydraulic Co. vs. City of Bridgeport, 130 At. 164 (Supreme Court of Error of Connecticut); Pederson vs. Stanley County, 149 N. W. 422 (Supreme Court of South Dakota).

The Supreme Court of Texas, in the case of the County of Galveston vs. J. C. Gorham, 49 Tex. 279, first recognized that there was a distinction between an illegal tax paid under a mistake of law and a legal tax paid by the taxpayer under a mistake of fact. In answering the question of whether or not a taxpayer had the right to recover taxes paid illegally under a mistake of law, the court said:

"We are of opinion that they have not, because in such case it is voluntarily paid, and it, under the circumstances, is not contrary to good conscience for the county to retain it. It was voluntary, because it was without objection paid under a mistake of law, if it was illegal, and there was no mistake of fact in paying it, and no deceit, fraud, or compulsion used in collecting it, or in causing it to be paid, on the part of the county or of any of its officers, that prevented the will of the parties paying it from being freely exercised in doing the act."

The court further said:

"When money is paid under a mutual mistake of law, the mistake of law, in and of itself, is no ground for recovering it back."

"A mistake of fact on the part of one who pays, and deceit or fraud and compulsion on the part of one who re-

ceives, under which money is paid, are each and all legally recognized as facts sufficient in and of themselves to pervert the will of the party doing the act, so that it could be said and held, that the will did not concur with the act done, thereby relieving him from the responsibility for and the consequences of the act. These are such facts as it is practicable to judicially investigate, and there is no great public policy in forestalling their investigation, when they exist in a degree well defined, and practically capable of exerting a controlling influence upon the acts of the party who has paid the money, as it may then be said, against his will, or at least in the absence of its free exercise."

The same facts as outlined in your letter confronted the Beaumont Court of Civil Appeals in the case of Frost vs. Fowlerton Consolidated School District No. 1, et al., 111 S. W. (2d) 754. In this case, a man named Master-son paid school taxes to Fowlerton Consolidated School District No. 1. from the years 1911 to 1926, inclusive. He paid the taxes in good faith, and the School District accepted them in good faith. When it was discovered that Master-son's property was not within the limits of the School District, the trustees of the District, in an effort to refund him his taxes, executed and delivered to him a warrant for the same, which was in issue in the case. The court said:

"The payment of the taxes by Master-son, through a mutual mistake, on property not within the School District, was not a 'voluntary payment' within the rule denying recovery for taxes paid voluntarily and without compulsion. The general rule is thus well stated by 61 C. J. 985."

The court then quotes the section from Corpus Juris which has been previously quoted in this opinion. The court then quotes from the case of Pederson vs. Stanley County (previously cited) as follows:

"It is the contention of appellant that under the general rule that taxes voluntarily paid cannot be re-

covered the respondent was not entitled to recover a judgment for the said amounts so paid to Stanley County. "We are of the view that the said rule has no application to the facts of this case. The property of respondent was wholly outside of the taxing jurisdiction or taxing district of Stanley County, and was therefore not taxable at all in that county, and the amounts so paid by respondent to said Stanley county were in fact not a tax at all. Stanley county was wholly without jurisdiction or authority to levy and collect such sums as a tax against the property of respondent."

The court, in the same case, stated further;

"The fact that the taxes paid by Masteron - the very money paid by him - had been expended by appellee and was not in his possession when the warrant was issued, did not take from the trustees the power to issue the warrant."

As to the manner of payment of this warrant, the court states as follows:

". . . possible appellee could not have paid the warrant from the state and county funds, but appellee had other funds derived from local taxes, tuition fees, etc. The expenditure of these funds falls within the provisions of Section 2 of Article 2827, which provides: 'Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds, and for purchasing appliances and supplies for the payment of insurance premiums, janitors, and other employees, for buying school sites, buying, building and repairing school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county district to be ap-

proved by the county superintendent; provided, that when the State Available School Fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein."

It is the opinion of this department, therefore, that the trustees of this school district may refund the money collected from this taxpayer by issuing her a warrant drawn on the local maintenance fund collected from local taxes, tuition fees, etc. The money may not be paid from the State and county funds furnished the school district. In this respect, however, your attention is called to the case of Pfluger, et al vs. Hutto Independent School District, 34 S.W. (2d) 632 (Court of Appeals of Austin), where a plea of limitations was sustained by the Court in a case where taxes had been paid to a school district on property not located within said school district. The court held that the facts in that particular case were such as to arouse the suspicion of the taxpayer so as to start the running of the two year statute of limitations, by which the taxpayer was barred in that case.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Billy Goldberg
Assistant

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APPROVED SEPTEMBER 5, 1939
GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY BWB, CHAIRMAN