



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Compton White
County Auditor
Freestone County
Fairfield, Texas

Dear Sir:

Opinion No. 0-1427

Re: Procedure to be followed in paying commission due delinquent tax attorney under delinquent tax contract with Commissioners' Court for collection of delinquent state, county, road district and common school district taxes.

We are in receipt of your letter of September 9, 1939, which reads in part as follows:

"Freestone County has a contract with Harvey H. Vibrock to collect state, county, road district, and common school district delinquent taxes.

"The County Tax Assessor-Collector of this county retains commissions due the delinquent collector and pays direct all commissions due him on state, county, and road district taxes.

"Heretofore the Tax Assessor-Collector has paid all school monies to the proper authority and the delinquent collector received his commissions by school vouchers, signed by the trustees of the various school districts. These vouchers are also signed by the county superintendent and the county auditor.

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"Would it be legal for the Tax Assessor-Collector to retain commissions due the delinquent tax collector and pay him direct as is done on state, county and road district taxes, or is it necessary to use the voucher system as we have been doing."

For the purpose of this opinion, we assume that this delinquent tax contract with Mr. Vibrock was entered into in accordance with the provisions of Articles 7335 and 7335a of the Revised Civil Statutes of Texas. We do not have this contract before us, and cannot construe the various terms and provisions that may appear therein.

With respect to common school district taxes, Article 2784 of the Revised Civil Statutes, 1925, provides in substance that the Commissioners' Court of the county shall have the power to levy and cause to be collected such taxes, and this statute "makes the Commissioners' Court of the county the governing body of the common school districts in such county insofar as the power to levy and cause to be collected the annual ad valorem taxes in such common school districts is concerned." Attorney General's Opinion No. 0-980, dated June 24, 1939.

As such governing body, the Court may lawfully enter into contracts with an attorney for the collection of delinquent taxes, for such common school districts and other delinquent state and county taxes. Articles 7335, 7335a and 7337, Revised Civil Statutes of Texas; Cherokee County et al vs. Odom, 118 Tex. 288, 15 S. W. (2d) 538; Commissioners' Court et al v. Wallace, et al, 118 Tex. 279, 60 S. W. (2d) 535; State vs. Epperson, 121 Tex. 80, 42 S. W. (2d) 228; McCollom vs. City of Richardson (C.C.A.) 121 S. W. (2d) 423.

Article 2795 of the Revised Civil Statutes provides for the levy and collection of common school district taxes by the Commissioners' Court and reads in part as follows:

". . . The tax collector shall collect said taxes as other taxes are collected. The tax assessor shall receive a commission of one-half of one per cent for assessing such tax and the tax collector a commission of one-half of

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one per cent for collecting the same. The tax collector shall pay all such taxes to the county treasurer, and said treasurer shall credit each school district with the amount belonging to it, and pay out the same in accordance with law."

We assume that the County Assessor-Collector of Freestone County, Texas, has been lawfully authorized to collect common school district taxes in accordance with the provisions of Article 1042b, Revised Civil Statutes of Texas (effective May 16, 1939, Acts 1939, 46th Legislature, H. B. 1032), which reads in part as follows:

"Any . . . common school district . . . is hereby authorized by ordinance or by proper resolutions to authorize the County Assessor of the county in which said . . . common school district . . . is located to act as Tax Assessor for said . . . common school district . . . or authorize the Tax Collector of the County in which said . . . common school district . . . is situated to act as Tax Collector for said . . . common school district. . .

"Sec. 2. When an ordinance or proper resolution is passed making available the services of the County Tax Assessor to such . . . common school district . . . it shall be the duty of the said Tax Assessor of the county in which . . . such common school district . . . is situated to assess the taxes for said . . . common school district . . . and perform the duties of Tax Assessor for said . . . common school district . . . according to the ordinances or resolutions of said . . . common school district . . . and according to law.

"Sec.3. When an ordinance or proper resolution is passed availing such . . . common school districts . . . of the services of the County Tax Collector, it shall be the duty of the said Tax Collector of the county in which said . . . common school districts . . . are situated to collect the taxes and assessments for said . . . common school districts . . .

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and turn over as soon as collected to the respective proper depository of said . . . common school districts . . . or other authority authorized to receive such taxes or assessments, all taxes or moneys collected . . . less his fees hereinafter provided for, . . ."

In State vs. Epperson, et al, 121 Tex. 80, 42 S. W. (2d) 228, decided by Section B. of the Commission of Appeals in 1931, a contract was entered into between Epperson, an attorney, and Hidalgo County for the collection of delinquent state and county taxes. A controversy arose as to commissions due Epperson, and Epperson filed his petition for mandamus in the District Court against the County Tax Collector, and by amended petition, all members of the Commissioners' Court were made respondents to compel the collector to hand over to him some \$23,000.00 in commissions allegedly wrongfully withheld. In the course of its opinion, the court said:

"By legislative act the State has constituted the Tax Collector of the county its agent to receive delinquent taxes collected under such contract, and it is the duty of such officer to pay all fees and commissions lawfully incurred in the collection thereof to the various parties who may be entitled thereto. Under such circumstances, the Tax Collector's duty with reference to money belonging to persons who are entitled under valid contracts to receive the same from him is purely ministerial. If he withholds the payment of such funds when a person is lawfully entitled to receive the same, he has failed to discharge a duty imposed upon him by law, and his act is a wrongful one."
(Underscoring ours).

The Court also said:

"If Epperson's contention in the suit filed by him in Hidalgo County is true, that is, that he has performed certain services under a valid contract with the Commissioners' Court, and that

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under the provisions of such contract he has earned certain commissions which lawfully belong to him, then it logically follows that the Tax Collector, as an agent of the State, is wrongfully withholding possession of property which it is his legal duty under the statutes of this State to deliver to Epperson."

See also, *Cornell vs. Swisher County, et al* (C.C.A.) 78 S.W. (2d) 1072; *Tartley, Tax Collector, et al vs. Epperson*, (C.C.A.) 50 S. W. (2d) 919 (Reversed by Sup. Ct. on other grounds, 79 S. W. (2d) 1081).

Under the authority of *State vs. Epperson, supra*, and Articles 7335, 7335a, 2784 and 7337, you are respectfully advised, and we hold that when the County Commissioners' Court as the governing body of the common school districts in its county for the collection of common school district taxes has by proper ordinance or resolution legally designated the County Assessor-Collector as its agent to collect the taxes in accordance with the provisions of Article 1042b of the Revised Civil Statutes, then it is the duty of such tax assessor-collector to perform the ministerial act of withholding such amounts as may be lawfully due to the tax attorney, under the delinquent tax contract. Such tax assessor-collector has the duty to perform this ministerial act for the various common school districts involved in acting as their agent, just as he has the duty, as pointed out in *State vs. Epperson, supra*, to collect the delinquent taxes due the State, and withhold from the amounts so collected the lawful commissions due the delinquent tax attorney under his contract with the Commissioners' Court and pay the same over to him.

You are therefore respectfully advised, and it is the opinion of this department, that it is legal and proper for the county tax collector-assessor to retain commissions lawfully due the delinquent tax attorney under the terms of his contract with the Commissioners' Court from such common school district taxes collected and pay the same to such attorney as you state has been the procedure previously followed with reference to delinquent

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tax collections on the state and county taxes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Cecil C. Rotsch*
Cecil C. Rotsch
Assistant

CCR:BT
APPROVED OCT 4, 1939

R. F. Moore
FIRST ASSISTANT
ATTORNEY GENERAL

