



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

March 20, 1940

**Honorable B. M. Whiteacre
County Auditor, Grayson County
Sherman, Texas**

Dear Sir:

Opinion No. O-1549

Re: Can the county recover under the official bond of the tax assessor-collector when it is shown that such assessor-collector has not used due diligence in the collection of delinquent taxes? What are the duties of the tax assessor-collector with reference to the collection of delinquent taxes?

This will acknowledge receipt of your letter bearing date, March 11, 1940, requesting the opinion of this Department on the above stated questions.

Under Article 7247 and 7249 Vernon's Civil Annotated Statutes, within twenty days after his appointment and election, the assessor-collector is required to give bond to the state and to the county judge (in the amount and with the sureties as set forth) conditioned "for the faithful performance of the duties of his office as assessor and collector of taxes for and during the full time for which he was elected or appointed."

We quote from Texas Jurisprudence, Vol. 40, pages 321 and 322 as follows:

Honorable B. M. Whiteacre, March 20, 1940, Page 2

"As already mentioned (Section 237), the bond of the collector is conditioned 'for the faithful performance of the duties of his office as collector of taxes for and during the full term for which he was elected or appointed.'

"The sureties are therefor liable for all taxes collected and for which it is the collector's duty to account to the state or county treasury, regardless of whether the collector claims that the money was rightfully retainable by him as fees of office or whether he embezzled it.

"Indeed, it has been said that it is the collector's duty to account (and that his sureties are liable on the bond if he should fail to do so) in any event except where loss has been sustained by act of God or the public enemy. . ."

We quote from Texas Jurisprudence Vol. 34, pages 370 and 571 as follows:

"There can be no liability on the part of the sureties of an officer's bond without default on the part of the principle in regard to the duties which they have contracted that he shall discharge. To render them liable, the act complained of must be a violation of the conditions of the bond. Their liability is strictissimi juris; it can not be extended by implication or construction beyond the terms of their contracts; and they must be given the benefit of any doubt as to the meaning of the terms of the bond . . ."

We are unable to find any authority authorizing the county to recover on official bond of the tax assessor-collector when such assessor-collector does not use due diligence in the collection of delinquent taxes. Therefore, your first question is respectfully answered in the negative.

Honorable B. M. Whitesacre, March 20, 1940, Page 3

With reference to your second question regarding the duties of the tax assessor-collector with reference to the collection of delinquent taxes, the duties of the tax assessor-collector in connection with the collection of delinquent taxes are so numerous and the question as submitted is so general that we cannot definitely answer this question. However, should you desire to submit to this department a definite or any specific question, we will be glad to give such request our most careful consideration.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AM:SW

APPROVED MAR 23, 1940

Gerald B. Mann

ATTORNEY GENERAL OF TEXAS

