



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom Seay
County Attorney
Potter County
Amarillo, Texas

Dear Sir:

Opinion No. 0-1619
Re: Does Article 7331, R. C. S.,
1925, as amended in 1939,
limit the tax collector to
one One Dollar fee per year
from any one delinquent tax-
payer?

We are in receipt of your letter of October 20,
1939, in which you request an opinion of this Department on
the facts set out in your letter as follows:

"Where a taxpayer owns more than one
lot in the same block and same subdivision,
upon all of which lots taxes have become
delinquent, and the taxpayer pays the taxes
which are delinquent on one lot and re-
ceives his redemption certificate on said
lot, and pays the \$1.00 fee for each year
of delinquency as provided for in Article
7331, is the Assessor and Collector of Taxes
allowed and required to collect this fee of
\$1.00 for each year of delinquency for issu-
ing a redemption certificate on another lot
in the same block and same subdivision for
the same years at a subsequent date?"

Article 7331 of the Revised Civil Statutes of 1925,
prior to its amendment, read, in part, as follows:

"For preparing the annual delinquent
list of assessments charged to the tax col-
lector upon the tax roll, but which have not
been collected at the time of his annual

settlement with the State and county, separating the property previously sold to the State from that reported sold as delinquent for preceding years and for prorating the State taxes into State revenue, State school and State pension, calculating the penalty, extending it and adding it in with other taxes, balancing the delinquent lists and certifying it to the commissioners court and the Comptroller, the tax collector shall be entitled to a fee of one dollar for each correct assessment of land to be sold, said fee to be taxed as costs against the delinquent.
* * * **

In construing this old statute, the Attorney General's Department, in a number of opinions written by Honorable H. Grady Chandler, Assistant Attorney General, held that the One Dollar fee provided therein should be allowed for each tract of land upon which delinquent taxes were owed.

In 1929, in the case of State v. Frost, 16 S. W. (2d) 331, Court of Civil Appeals, the Court held that seventy-four lots in one subdivision were one tract and the tax collector was entitled to only One Dollar for the entire tract under Article 7331 before same was amended. Another Court of Civil Appeals held the same in the case of State vs. Slater, 14 S. W. (2d) 877. This case was, however, reversed by the Supreme Court of Texas in an opinion written in 38 S. W. (2d) 1097. The Supreme Court held that under the old statute the tax collector was entitled to One Dollar for each tract, and "tract" was defined as the unit which was the last or smallest subdivision. It is to be noted that this opinion of the Supreme Court was handed down in 1931, after the amendment of Article 7331 in 1930. However, the case was concerned only with the old statute and did not mention or discuss the new statute and the effect of the amendment.

It was during the period of this unsettled condition of the law on this particular matter in 1930 when the Legislature amended Article 7331. Said Article was amended by the Forty-first Legislature, Fourth Called Session, Chapter 20, Section 8. Subsequent to the amendment, Article 7331 of the Revised Civil Statutes reads, in part, as follows:

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"For calculating and preparing redemption certificates and receipts, reporting and crediting redemptions, posting Comptroller's redemption numbers on the delinquent tax record or annual delinquent list, mailing certificates of redemption to taxpayers after approval by the Comptroller, and for issuing receipts or certificates of redemption for property shown on the annual delinquent list, the tax collector shall be entitled to a fee of one dollar (\$1.00) for each correct assessment of land to be sold, said fee to be taxed as costs against the delinquent. Correct assessment as herein used means the inventory of all properties owned by an individual for any one year.
* * * *

It is to be noted from Article 7331, as amended, that the Legislature has now specifically provided that only one One Dollar fee is chargeable per year against any one delinquent taxpayer regardless of the amount of property upon which he owes taxes. The Legislature has specifically defined what is meant by "correct assessment" as "the inventory of all properties owned by an individual for any one year."

Since Article 7331 was amended in 1930, there have been no cases which have been concerned with the proposition as set out in your letter. However, the question was ruled upon by Attorney General James V. Allred in a conference opinion, dated August 18, 1933, written by Assistant Attorney General Homer C. DeWolfe. Mr. DeWolfe's opinion reads, in part, as follows:

"Here again the compensation allowed is for the performance of a series of acts which must be substantially performed before the fee allowed is earned. However, the fee is not dependent upon the filing of suit to collect the taxes delinquent, but is dependent upon the performance of the several services enumerated and upon the actual collection of the taxes, penalties, interest, and costs.

"It must further be observed that the term 'correct assessment,' as used in the

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Act of the Forty-first Legislature, is meant 'the inventory of all properties owned by an individual for any one year'. Theretofore, the term 'correct assessment' had been used to mean each tract of land as defined by the Legislature and by the courts; under the Act of the Forty-first Legislature, however, the term 'correct assessment' would include all tracts of land upon which taxes were delinquent for any one year, located in the county and owned by one individual.

"Since January 1, 1931, however, the tax collector has been entitled to a fee of one (\$1.00) dollar for each correct assessment of land to be sold as shown by the annual delinquent list (correct assessment meaning the inventory of all properties owned by an individual for any one year) 'for calculating and preparing redemption certificates and receipts, reporting and crediting redemptions, posting Comptroller's redemption numbers on the delinquent tax record or annual delinquent list, mailing certificates of redemption to taxpayers after approval by the Comptroller, and for issuing receipts or certificates of redemption for property shown on the annual delinquent list."

It is the opinion of this Department that the question was correctly disposed of by Assistant Attorney General Homer DeWolfe, in the opinion above quoted. The Legislature, by amendment, has provided for a One Dollar fee to be paid to the tax collector for the performance of a number of services in connection with preparing and recording redemption certificates. The Legislature has not set-up this One Dollar to be collectable upon each redemption certificate issued but rather has allowed the same to the tax collector for a number of services including redemption certificates to be issued in connection with each correct assessment of land. The Legislature has further defined the term 'correct assessment' to mean the inventory of all properties owned by an individual for any one year.

It is, therefore, the opinion of this Department, that

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regardless of the time of payment by a taxpayer of delinquent taxes on different parcels of property which he owns and which payments are made at different times, the One Dollar fee provided in Article 7331 is collectable only once by the tax collector for each year on all the property of the taxpayer taken together.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Billy Goldberg*
 Billy Goldberg
 Assistant

BG:RS

APPROVED NOV 22, 1939

Gerald G. Mann

ATTORNEY GENERAL OF TEXAS

