



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. Jack Wiech  
County Attorney  
Cameron County  
Brownsville, Texas

Dear Sir:

Attention of Mr. Wm. Scanlan

Opinion No. O-1695

Re: What is the proper distribution  
of proceeds in the sale of pro-  
perty under delinquent tax lien  
foreclosure under Article 7345b?

When do county attorney's fees  
provided for under Article 7332  
accrue in delinquent tax suits  
under Article 7345b?

Your request for an opinion on the above stated  
question has been received by this department.

Your letter reads in part as follows:

"With reference to our question numbered  
one, please be advised that the taxing agencies  
of this County have for some time past proceed-  
ed under Art. 7345b, Revised Civil Statutes of  
Texas, 1925, in suits to foreclose delinquent  
tax liens. We have now arrived at the point  
where property having been so foreclosed upon  
was sold, and certain questions have arisen with  
reference to the distribution of cash obtained  
from the proceeds of such sale. The two methods  
of distribution contended for are set out in  
forms prepared for said purpose and enclosed  
herewith for better explanation of the questions  
involved.

"In the particular example under considera-  
tion, there are ten acres of land which are  
taxed by six municipalities, to wit: State,  
County, Drainage District, Water District, Navi-  
gation District, and Independent School District.

Hon. Jack Wiech, Page 2

The taxes for the State of Texas, County, and the Drainage District are collected by the County Assessor and Collector, and delinquent tax suits for said agencies are prosecuted by the County Attorney of this County. The Water District, Navigation District, and Independent School District each has its own assessor and collector; however, these three municipalities have employed the same attorney to bring suits for them to collect delinquent taxes.

"Upon the ten acres involved taxes were delinquent for a period of years, the total tax, penalty, interest and line cost for all agencies totaling \$700, for which principal amount judgment was taken in our District Court under said Art. 7445b. The Court in said proceeding fixed an adjudged value under Sec. 5 of said Article, upon the said ten acres at \$500. The property was sold under order of sale and purchased by the Water District for the use and benefit of itself and all other taxing units which were parties to the suit by authority of Sec. 9 of said Article. Subsequent thereto, the said Water District sold the said property to a private individual at the price of \$500, same being the adjudged value of the said property in said foreclosure suit."

".....and in said foreclosure suit, investigating costs in the amount of \$10 were proved, as were ten per cent (10%) of the tax, penalty, interest, and line cost, on amounts due the Water, Navigation, and Independent School Districts, allowed as attorney's fees, which amounts were written into said judgment.

"It is now the contention of the attorney representing said Water, Navigation and Independent School Districts that the proceeds from said sale should be distributed as set out in Exhibit "B" enclosed herewith, in which the district court costs, costs of investigation, and ten per cent (10%) of the principal amount

Hon. Jack Wiech, Page 3

of tax, penalty, interest and line cost, due the said Water District, Navigation District and Independent School District, as attorney's fees, are deducted from the amount obtained from the sale of said property, and paid in cash, the remainder thereof to be prorated amongst the various taxing agencies, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment.

".....

"Kindly let us have the opinion of your office as to the proper distribution of proceeds in the sale of property under delinquent tax lien foreclosure. (Art. 7345b).

"With reference to our second question, Art. 7332, Revised Civil Statutes of Texas, 1925, provides for the fees of the County Attorney in representing the State and County in all suits against delinquent tax payers and also sets out the compensation for services rendered therein by certain other county officials. The said Act, as finally amended in 1931, certainly was enacted by the Legislature without having before it Art. 7345b, which latter Act was not passed until the 45th Legislature in 1937.

"In instances where the State institutes the proceeding under Art. 7345b, or where some other taxing agency institutes same and it is carried to judgment, there is no inconvenience or difficulty in applying the said Art. 7332 for the taxing of fees due the various county officers. However, in instances in which a suit is brought under Art. 7345b by some other taxing agency and the State and County are impleaded as parties defendant, but before the filing of the tax claim for the State and County in said suit, the suit is dismissed at plaintiff's cost, it has been the contention of the taxing agencies bringing said suit that the fees

Hon. Jack Wisch, Page 4

due the County Attorney and provided for in Art. 7332, do not accrue and are not payable.

"Therefore, we sincerely request your advice as to when county attorney's fees provided for in Art. 7332 accrue in suits instituted by taxing units under Art. 7345b, and in which the State and County are impleaded as parties defendant, or intervene therein."

We quote Sections 5, 6, 8 and the first paragraph of Section 9 of Article 7345b, Vernon's Civil Annotated Statutes as follow:

"Sec. 5. Upon the trial of said cause the Court shall hear evidence upon the reasonable fair value of the property, and shall incorporate in its judgment a finding of the reasonable fair value thereof, in bulk or in parcels, either or both, as the Court may deem proper, which reasonable fair value so found by the Court is hereafter sometimes styled 'adjudged value', which 'adjudged value' shall be the value as of the date of the trial and shall not necessarily be the value at the time the assessment of the taxes was made; provided, that the burden of proof shall be on the owner or owners of such property in establishing the 'fair value' or adjudged value as provided in this section and, provided further that this section shall only apply to taxes which are delinquent for the year 1935 and prior years.

"Sec. 6. All court costs, including costs of serving process, in any suit hereafter brought by or in behalf of any taxing units for delinquent taxes in which suits all other taxing units having a delinquent tax claim against such property of any part thereof, have been impleaded, together with all expenses of foreclosure sale and such reasonable attorney's fees as may be incurred by the interpleaded or intervening taxing units, not exceeding ten per cent (10%) of the amount sued for, such attorney's fees to be subject to the approval of the court together with such reasonable expenses as the taxing units may incur in procuring data and information as to the name, identity and location of necessary parties and in procuring

Hon. Jack Wiech, Page 5

necessary legal descriptions of the property, shall be chargeable as court costs.

"Sec. 8. No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly, or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgments against said property, shall be paid to the parties legally entitled to such excess.

"Sec. 9. If the property be sold to any taxing unit which is a party to the judgment under decree of court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same, and such property shall not be sold by the taxing unit purchasing same for less than the adjudged value thereof or the amount of the judgments against the property in said suit, whichever is lower, with-

Hon. Jack Wiech, Page 6

out the written consent of all taxing units which in said judgment have been found to have tax liens against such property; and when such property is sold by the taxing unit purchasing same, the proceeds thereof shall be received by it for account of itself and all other said taxing units adjudged in said suit to have a tax lien against such property, and after paying all costs and expenses, shall be distributed among such taxing units pro rata and in proportion to the amount of their tax liens against such property as established in said judgment. Consent in behalf of the State of Texas under this Section of this Act may be given by the County Tax Collector of the county in which the property is located."

Article 7332, Vernon's Civil Statutes, provides that the county or district attorney shall represent the State and county in all suits against delinquent tax payers and definitely provides certain fees for the county or district attorney for the services named therein. We quote from this article as follows:

"....Provided, that the fees herein provided for in connection with delinquent tax suits shall constitute the only fees that shall be charged by said officers for preparing, filing, instituting, and prosecuting suits on delinquent taxes and securing collection thereof, and all laws in conflict herewith are hereby repealed.

"In case the delinquent tax-payer shall pay to the collector the amount of delinquent taxes for which he is liable, together with accrued interest after the filing of suit before judgment is taken against him in the case, then, only one-half of the fees taxable in such a case, as provided for herein, shall be charged against him....."

Article 7333, Vernon's Civil Statutes, reads as follows:

"In each case such fees shall be taxed as

Hon. Jack Wiech, Page 7

costs against the land to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon are paid, and in no case shall the State or county be liable therefor."

By Section 9 of Article 7345b, supra, the Legislature has specifically provided that all costs and expenses in the suit under this statute shall be paid prior to the apportionment to the various taxing units of their respective shares and proceeds from the tax sale. It is called to your attention, however, that the costs and expenses incurred in such a tax suit are not payable until after sale of the property is made by the taxing unit which purchased the same at the original sale. In Section 9, supra, the Legislature specifically provided "and costs and expenses shall not be payable until sale by such taxing unit so purchasing same." None of the court costs or expenses may be paid until after the property has been sold by the taxing unit which purchased the same in the first sale and after said sale, said costs are to be paid first out of the proceeds of such sale and the balance of the proceeds of such sale, after all costs and expenses have been paid, must be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against said property, pro rata, and in proportion to the amounts of their respective tax liens as established in said judgment.

Section 6 of Article 7345b, supra, deals with what may be allowed as court costs. No where in this section does it provide that taxing units shall pay an attorney's fee of 10%. Furthermore, no where in this section is it provided that 10% may be charged in every case as court costs for attorney's fees. It is provided, however, that such reasonable fees as may be incurred by the interpleader or intervening taxing units and not exceeding 10% of the amount sued for, may be charged. In other words, if a taxing unit contracted with an attorney to pay him 5% for his services, then only this 5% would be chargeable as court costs because that would be the reasonable attorney's fees that would be incurred by that particular interpleader or intervening taxing unit. However, if that same taxing district contracts with an attorney to pay him 15%

Hon. Jack Wiech, Page 8

as his attorney's fees, only 10% of that amount would be chargeable as court costs. To bear this out is the fact that the Act does not provide for 10% attorney's fees in every case but provides for the allowance of attorney's fees as incurred not exceeding 10%.

While Section 6 of Article 7345b, supra, applies to all taxing units, it is evident that the part which refers to attorney's fees as court costs does not apply to the county or district attorney. This is true because this section reads, in part, as follows:

"...Such reasonable attorney's fees as may be incurred by the interpleader or intervening taxing units...."

The particular language above quoted shows the legislative intention that the same shall not apply to the county attorney's fee or district attorney's fees because of the fact that the State and county are prohibited by Article 7333, supra, from incurring any attorney's fee. The fees of the county or district attorney are set out by Article 7332, supra, and in no case may the State or county be liable for the same under Article 7333, supra, which article also requires that said fee be charged as court costs.

In answer to your second question you are respectfully advised that it is the opinion of this Department that the district or county attorney is not entitled to the fees provided by Article 7332, supra, in tax suits filed under Article 7345b, by a taxing unit other than the State and county where the district or county attorney does not file an answer or claim for the State and county. Fees are primarily allowed for some specific service performed and where no service is rendered no fee can be charged or allowed unless specifically authorized by statute.

Trusting that the foregoing fully answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

APPROVED JAN 12, 1940

AW:AW