



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Stephen F. Hebert
County Attorney
DeWitt County
Cuero, Texas

Dear Sir:

Opinion No. 0-2181
Re: Under the facts set forth, may the
tax collector issue a voting poll
tax receipt to the subject parties.

We have carefully considered your letter of recent date, requesting the opinion of this department upon the matter described in your letter as follows:

"On Dec. 15, 1939, a certain gentleman in this county, being in the oil lease business, came to the Tax Collector's Office and paid all of a certain party's taxes, including poll taxes for the husband and wife. The party whose taxes were paid by this lessee was the lessor. It so develops that the Tax Collector issued tax receipts for all that was paid by this lessee, but did not issue actual poll taxes, receipts and apparently this lessor, whose taxes were paid, failed to notice when this lessee brought his tax receipts back to him, that he did not actually have his poll tax receipts for himself and his wife.

"It now develops that apparently the lessee who paid the above taxes had a signed lease from the lessor, properly acknowledged, in his possession, and presented same to the Tax Collector when the lessee paid these taxes. The last paragraph in the lease properly signed by the lessor, and held by the lessee, and which said lessee presented when he paid the taxes, read as follows:

Hon. Stephen P. Hebert, page 2

"Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor, by payment, any mortgage, taxes, or other liens on the above described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof."

"The Tax Collector takes the position now that since the poll tax receipts were not issued before January 31, 1940, that he cannot issue them now. The lessee takes the position that since the poll taxes were paid in due time according to law, and that the last paragraph above referred in said lease held by the lessee who paid the poll tax, properly signed and notarized, was sufficient authority for the Tax Collector to have issued the actual poll tax receipts."

It is clear, in our opinion, that the issuance of voting poll tax receipts by the tax collector, under the circumstances described in your letter, would be violative of the following statutes:

Article 2961, Revised Civil Statutes of Texas, which provides:

"Art. 2961. MODE OF PAYING POLL TAX

If the taxpayer does not reside in a city of ten thousand inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by him in writing to pay the same, and to furnish the collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the tax collector and filed and preserved by him."

Article 2963, Revised Civil Statutes of Texas, which provides, in part:

Hon. Stephen P. Hebert, page 3

*Art. 2963. RECEIPT MAILED

* * * * .

"All tax receipts issued for any year after January 31st shall be stamped on the face thereof: 'Holder not entitled to vote,' and the names of the holders of such poll tax receipts shall not be included in the list of qualified voters."

It is observed that Article 2961, supra, requires the taxpayer not only to sign an agency authorization but also the statement containing the information necessary to enable the tax collector to prepare the poll tax receipt, same to be deposited with the tax collector and filed and preserved by him. Manifestly, this requirement of the statute has not been complied with under the facts stated in your request, even if the oil and gas lease described were a sufficient agency authorization, concerning which we need not and do not express an opinion.

Likewise, Article 2963, supra, places the mandatory duty upon the tax collector to stamp on the face of any poll tax receipt issued after January 31st of any year the words "Holder not entitled to vote". Certainly this provision would be violated were the tax collector at this time, to issue a poll tax receipt without the notation thereon as prescribed by this statute.

We also call your attention to Article 199 of the Penal Code, which provides:

*Art. 199. TAX COLLECTOR UNLAWFULLY DELIVERING RECEIPT

Any tax collector who delivers a poll tax receipt or certificate of exemption to any one except the one entitled thereto and at the time when the tax is paid or the certificate of exemption is applied for, except as specially permitted by law shall be fined not less than one hundred nor more than one thousand dollars, and shall be removed from office."

Hon. Stephen F. Hebert, page 3

You are, therefore, respectfully advised that it is our opinion that there are no steps which the tax collector may take, under the circumstances described in your letter, whereby he may at this time, under the statutes defining the duties of his office pertaining to poll taxes, issue to the subject parties a valid voting poll tax receipt.

Trusting that we have satisfactorily answered your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Zollie C. Steakley*
Zollie C. Steakley
Assistant

APPROVED APR 20, 1940

ZCS:ob

Wm. Sullivan
FIRST ASSISTANT
ATTORNEY GENERAL

