



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John S. Baker
County Auditor
Lamar County
Paris, Texas

0-2799

Dear Sir:

Opinion No. 0-2799

Re: Is it the duty of the tax collector to furnish tax certificates? If so may he make a reasonable charge for the same?

We are in receipt of your letter of September 30, 1940, in which you request the opinion of this department on the questions contained therein as follows:

"Please refer to Article 7324, which law requires that:

"The tax collector shall furnish on demand of any person, firm or corporation like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of office attached."

"Is it necessary that the 'like' statement be on the form for notice to delinquent taxpayer, as prescribed by the comptroller department? Is it permissible for the tax collector to charge a fee for this certificate?"

"In the event there are no delinquent taxes of record, is it permissible for the collector to certify that no delinquent taxes are of record, and may any fee be charged for this certificate?"

Article 7324 of the Revised Civil Statutes of Texas provides, in part, as follows:

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"During the month of July each year, or as soon thereafter as practicable, the collector of taxes in each county of this State shall mail to the tax roll address of each owner of any lands or lots situated in the county a notice showing the amount of taxes delinquent or past due and unpaid against all such lands and lots as shown by the delinquent tax record of the county on file in the office of the tax collector, a duplicate of which shall also have been filed in the office of the Comptroller of the State and approved by such office, but failure to send or receive such notice shall be no defense to a suit brought for taxes. Such notice shall also contain a brief description of the lands and lots appearing delinquent and the various sums or amounts due against such lands and lots for each year as they appear to be delinquent, according to such records, and it shall also recite that unless the owner of such lots or land described therein shall pay to the tax collector the amount of taxes, interest, penalties and costs set forth in such notice within thirty days from the date of notice, that the county or district attorney will institute suits for the collection of such moneys and for the foreclosure of the constitutional lien against such lands and lots. Each tax collector, as soon after mailing such notice as practicable, shall furnish to the County or District Attorney duplicates of all such notices mailed to the taxpayers in accordance with the provisions of this law, and also, lists of lands and lots located in the county appearing on the delinquent tax records in the name of 'unknown' or 'unknown owners'; or in the name of persons whose correct address or place of residence in or out of the county said collector is unable by the use of diligence to discover or ascertain, against which taxes are delinquent, past due, and unpaid, and such lists or statements shall show the amount of State and County taxes delinquent, past

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due, and unpaid against each such tract or lot of land for each year they appear to be delinquent according to the delinquent tax records of the county, and shall likewise contain a brief description of all such lands and lots. The tax collector shall furnish on demand of any person, firm or corporation like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of his office attached. * * *

We call your attention to the fact that the above quoted article does not set out any specific form upon which the tax certificates are to be made but rather sets out the information which such certificates shall contain. In referring to the "like" statements that the tax collector must furnish to any individual, firm or corporation demanding same, it is our opinion that the Legislature was referring to a statement or certificate containing like information. It has also been called to our attention that the Comptroller of Public Accounts does not prescribe any set form to be used in the issuance of tax certificates to individuals demanding the same. You are therefore advised that it is the duty of a tax collector to furnish said tax certificates upon request and that such certificates do not have to be on any set form but should contain the same information as prescribed in Article 7324 for the tax notice mailed to the tax payer.

Article 7324 does not provide any fee to the tax collector for the issuance of such a tax certificate to any individual upon demand. This department ruled in a conference opinion written by Assistant Attorney General H. Grady Chandler, during Attorney General Claude Follard's administration, in answer to the question of whether or not the tax collector is entitled to a fee for this service, as follows:

We see from Article 7324 that the tax collector is required to furnish on demand of any person a statement with reference to the delinquent taxes for whatever purpose desired. The Court of Civil Appeals has held in the case of State vs. Davison, et al, 220 S. W. 292, that this act requires the tax collector to issue statements with reference to delinquent taxes, using this language:

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"By the express terms of article 7652a, section 1 of chapter 13, Second Called Session of the Thirty-eighth Legislature, it is made the duty of the tax collector to furnish, on demand of any person or persons, firm, or corporation, statements with reference to the amount of taxes due on any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by and with the seal of his office attached."

"It is clear, then, that the law requires the tax collector to issue delinquent tax certificates, and the only question to decide is whether he is authorized to demand and collect a fee for this service.

* * *

* * *. If the statute does not provide a fee for an officer for a service that he is required to render, then he is not authorized to receive or collect a fee for such service. The statutes prescribing fees for public officers are strictly construed and fees by implication not permitted. This statement is held in a decision by the Commission of Appeals in the case of McCalla vs. City of Rockdale, 246, S. W. 654 in which the Court uses the following language:

"The courts of this state have adopted the rule construing strictly those statutes prescribing fees for public officers and against permitting such fees by implication. No officer is permitted to collect fees or commissions unless the same are provided for and the amount thereof declared by law. This is true, notwithstanding such officer may be required by law to perform specific services for which no compensation is provided. The obligation to perform such service is imposed as an incident to the office, and the officer is deemed to have engaged to perform them without compensation by his acceptance thereof."

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"In the case of Knight vs. Harper, 279 S. W. 529, the Court uses the following language:

"In order for a public officer to successfully assert a right to a fee of office, it must have been expressly provided for and declared by law."

"The fact, therefore, that the Legislature might have imposed a duty upon the tax collector without a fee for this duty does not permit him to make a charge for same. He is not the only officer who is required to perform duties without any fees for same. The county clerk, district clerk, sheriff and other officers are required to perform many duties for which no fees are provided, and resort is had only to the statutes authorizing the commissioners' court to grant ex-officio compensation.

"You are advised therefore that in answer to your first question, the tax collector is required by law to issue certificates with reference to delinquent taxes on land.

"In answer to the second question, you are advised that the tax collector is not authorized to charge a fee for this service."

We also call your attention to the case of Crosby County Cattle Co. v. McDermott, 281 S. W. 293. In that case suit was brought by the Tax Collector for the sum of \$500.00 based on a contract which he had entered into with an individual for the preparation of a tax certificate which was to contain not only the information required that the collector furnish under Article 7324, supra, but also the same was to be issued showing that the taxes were paid and by whom paid. The court held that the tax collector would not be entitled to recover for the furnishing of a certificate such as provided in Article 7324 because the same was within the scope of his duties. However, the court held that the tax collector could recover under the contract in question because the certificate in question required additional information above that which it is the tax collector's duty to furnish under said article. The court stated as follows:

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"Article 7324 of the Revised Civil Statutes of 1925 provides that the tax collector of a county shall, on the demand of any person, firm or corporation, furnish a statement duly certified from the delinquent tax records of the county showing the amount of taxes delinquent or past due and unpaid against any particular lot or tract of land for each year that it may appear delinquent. But there is no law in this State making it the duty of the tax collector to make a certified list from the tax records in his office showing that the taxes have been paid and by whom paid on any tract or parcel of land.

"It will be observed that the certificate requested was to show that the taxes were paid and by whom paid, and not for the purpose of disclosing taxes that were delinquent and unpaid.

"A public officer is not entitled to receive, for the performance of his official duties, any compensation other than such as is provided and permitted by law, and cannot recover for the performance of acts within the scope of his official duties. * * *

You also inquire whether it is permissible for the collector to certify that no delinquent taxes are of record in the event such fact is disclosed by the records of his office. Such a certificate was issued by the tax collector of Eastland County and discussed in the case of State v. Davison, 280 S. W. 292, by the Eastland Court of Civil Appeals, writ of error refused by the Supreme Court. The type of certificate was discussed by the court in the following language:

" * * * Before the sale was made, the commissioner's attorney applied to the tax collector of Eastland county for a certificate as to whether any delinquent taxes were due on the property. Pursuant to such request, the tax collector issued a certificate under seal, wherein it was certified that the taxes on the property described in plaintiff's petition were all paid up to and including the year 1922. * * "

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The court considered the issuance of such a certificate within the duties of tax collector and stated as follows:

" * *. By the express terms of article 7529a, section 1 of chapter 13, Second Called Session of the Thirty-Eighth Legislature, it is made the duty of the tax collector to furnish, on demand of any person or persons, firm or corporation, statements with reference to the amount of taxes due on any particular lot or tract of land for whatever purposes desired, which shall be in all instances certified by and with the seal of his office attached. * * *

We also call your attention to the statement by the court that the certificate was furnished gratuitously as follows:

" * *. The certificate of the tax collector was issued gratuitously, no fee was paid therefor, and appellant received no benefit therefrom. * * *

It is the opinion of this department that it is the duty of the tax collector to furnish on demand a statement or tax certificate showing the delinquent taxes against a particular lot or tract or in the event no taxes are owing then to issue a certificate stating such fact. You are further advised that any form upon which the required information is contained would be satisfactory as long as the official seal of the tax collector is attached thereto. It is our opinion also, in conclusion, that the tax collector is unauthorized to charge any fee for the issuance of any such tax certificate authorized under Article 7524.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED NOV 8, 1940

Gerard B. Mann

By

Billy Goldberg
Billy Goldberg
Assistant

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BC:RS

