OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Travis Co

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-2826, concerning Article 7211, Revised Civil Statutes.

In your letter of October 14, 1940, you request our opinion in response to the following question:

"Is the Tax Assessor-Collector required to show the value that he believes property to be worth on the inventory at the time the assessment is made by the owner, or is he permitted to place his value on the property after the assessment is taken, if he feels that the owner has rendered same for an amount less than its actual value, and then refer the matter to the Board of Equalization?"

Article 7211, Revised Civil Statutes, reads as follows:

"Hereafter when any person, firm or corporation renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each

> piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor, he shall so notify the assessor, and if desiring so to do make oath before the assessor that the valuation so fixed by said officer on said property is excessive; such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property on January First, 19____ (here give year for which assessment is made) as is herein provided; such officer or court shall take into consideration what said property could have been sold for any time within six months next before the first day of January of the year for which the property is rendered."

Your question concerns the meaning of the words "at once" as used in the above statute. The term has been before the courts frequently in the construction of contracts. See Words & Phrases, Permanent Edition, Vol. 4, pp. 682-688; 5 C. J. 1439. It should not be taken in its strictest literal sense, when to do so would require impossible instantaneous action. J. C. Smith & Wallace Co. v. Lunger, 46 A. 623, N. J.; Ford v. Friedman, 20 S. E. 930, W. Va. In many cases it has been held to require action "within such reasonable time as shall be required, under all the circumstances, for doing the particular thing." Words & Phrases, supra, p. 688, and cases there cited. It is sometimes said to require greater celerity of action than is ordinarily comprehended by a reasonable time. 5 C. J. 1439, footnote 90. In Virginia Hardwood Lumber Co. v. Hughes, 124 S. E. 283, Va., it was held to denote "a prompt and immediate" shipment. In Gladney Milling Co. v. Dement, 230 S. W. 1038, the term when used in a

contract was held to be ambiguous, subject to paral testimony as to its meaning. It was there said that "such orders have a far more restricted meaning than the term 'reasonable time'." The court cites Bowser v. Atkinson, 143 S. W. 75, Mo. Apps. From the opinion in the Missouri case we quote as follows:

> "Our conclusion is that the term 'at once', 'forthwith,' or any similar term when used in a contract for the purchase of goods, to designate the time when the goods are to be shipped has a more restricted meaning than the term 'reasonable time.' We do not think it should be held to mean a time simultaneous with the execution of the contract, for that would often be impossible; but it does mean, in the absence of anything to qualify it, that all reasonable haste consistent with fair business activity should be used in filling the order and making the shipment. . . ."

In the situation which you inquire about instantaneous action could hardly be contemplated. In many instances the tax assessor will not be prepared to fix the value of a piece of property the moment it is rendered. He may have a very good reason for believing that the property owner is undervaluing the property, but some investigation or inquiry may be necessary before he will be satisfied to set down the value. Since Article 7213, Revised Civil Statutes, pronounces the failure of the tax assessor to comply with the concerned provision a malfeasance and makes it ground for his removal, manifestly the words "at once" cannot be given such a meaning as to make compliance on the part of the assessor impossible. On the other hand, we think reasonable haste is required. The time within which the assessor may perform this function may conceivably vary slightly under different circumstances. If the assessor is prepared to fix the value at the time the rendition is made he should then make the notation. If not, in accordance with the above suggestions, he can do so later. But, he must bear in mind that under no circumstances can he delay his action so as to prejudice the right of the taxpayer to make his controverting affidavit and have the same delivered to the commissioners' court for use when sitting as a board of equalization.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Glenn R. Lewis

Glenn R. Lewis
Assistant

APPROVED OCT 22, 1940

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

G.R.L:DC