



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILLIAM B. HARRIS~~
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-2968

Re: The penalty to be charged a delinquent tax payer, interpreting House Bill No. 76, Forty-seventh Legislature.

In your letter of July 1, 1941, you request our opinion in response to the following questions:

"A renders three tracts of land on which the taxes are delinquent for two years. On the assessment for the real estate each year he also rendered personal property valued at \$1,000 as well as poll taxes for himself and wife. The personal property taxes, also the poll taxes are delinquent and appear on the delinquent tax records with the real estate.

"B holds a lien on one tract of the delinquent real estate and desires to pay the delinquent taxes due on the tract on which he holds a lien but refuses to pay the taxes on the other two pieces of property, also the taxes due on the personal property and poll taxes. Even though B pays all of the delinquent taxes due on this specific piece of land, would he not be required to pay a penalty of six per cent on the amount of taxes due on the tract of land on which he holds a lien?

"A renders one tract of land and personal property valued at \$1,000 for the years 1937, 1938 and 1939 also poll taxes for himself and wife. The taxes on the real estate, personal property and poll taxes are delinquent for three years. B holds a lien on the tract of land and desires to pay all of the delinquent taxes due on the property but refuses to pay the personal property taxes and the poll taxes. Would the tax assessor-collector be authorized to accept

the payment on the land without collecting the penalty of six per cent referred to in House Bill 76, or should he charge the lien holder the six per cent because he is not paying all of the delinquent ad valorem and poll taxes due by A."

Sections 1 and 3 of said House Bill 76 read as follows:

"Section 1. That all interest and penalties that have accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1940, due the State, and county, common school district, road district, levee improvement district, water improvement district, and water control and improvement district, irrigation district, and other defined subdivisions of the State (and, subject to the provisions hereinbefore and hereinafter contained, such interest and penalties on delinquent ad valorem and poll taxes due cities, towns and villages, and special school districts, and independent school districts,) shall be and the same are hereby released, provided said ad valorem and poll taxes are paid on or before November 1, 1941. It is provided that the provisions hereof shall not apply to cities, towns, and villages and special school districts, and independent school districts, unless and until the governing body of any such city, town, or village, or special school district, or independent school district finds that unusual or excessive default in the payment of ad valorem and poll taxes has occurred, and that an extension of time for the payment of such delinquent ad valorem and poll taxes will promote and accelerate the collection thereof, whereupon such governing body shall adopt a resolution or ordinance evidencing such finding, and upon the recording of such findings of fact the provisions of this Act shall be in full force and effect as to any such city, town, or village, or special school district, or independent school district. It is hereby expressly and specifically provided that penalties and interest herein released are released only on delinquent ad valorem and poll taxes and on no other taxes."

"Section 3. Anyone desiring to pay at one time all the delinquent taxes for only one year wherein such taxes are delinquent for more than one year shall have the right to pay the same but

without remission of penalties and interest; provided, however, that any persons availing themselves of the benefits of this Act shall be required to pay all delinquent ad valorem taxes due the State and county on any specific piece of property on which such taxes are delinquent before the penalties and interest may be released as herein provided; conditioned that a six per cent (6%) penalty on the total amount delinquent be paid on such property."

We will refer to our Opinion No. 0-3657 wherein we expressed the view that if a person owes taxes delinquent on several pieces of property he may single out one piece and pay the delinquent taxes assessed against it, if he does so of course, within the life of said House Bill 76, without paying other delinquent ad valorem and poll taxes owing by him but that in such a case he will have to pay a six per cent (6%) penalty. We answer your first question in the affirmative. In our opinion it does not make any difference whether the delinquent taxes are paid by the land owner or by the holder of a lien against the particular tract upon which the delinquent taxes are to be paid. It is of no concern to the State as to which of such parties pays the tax.

Our answer to your second question is that the tax assessor-collector would not be authorized to accept the payment on the land without collecting the penalty of six per cent (6%) referred to in House Bill 76 but that he should charge the lien holder the six per cent (6%) penalty levied in Section 3. From a full consideration of said Act we have reached the conclusion that it was the intention of the Legislature to release all penalties and interest if the tax payer would make payment of all delinquent ad valorem taxes owed by him, but that if he should choose to pay the delinquent taxes on a piece of property selected from among other pieces on which taxes also were delinquent he would have to pay a six per cent (6%) penalty on the amount of the delinquent taxes so paid on the selected property. Thus some inducement is offered the tax payer who pays all the delinquent taxes on a part only of his property, but a heavier inducement is offered if he will pay all delinquent ad valorem taxes owed by him. In the last fact situation submitted by you the tax payer is paying on a specific piece of property, leaving other delinquent ad valorem taxes unpaid, and in our opinion falls within the six per cent (6%) levy of penalty made in Section 3. Since you mention delinquent poll taxes and to avoid any misunderstanding with respect to that item, it would be well perhaps for us to express our view concerning the effect of House Bill 76 on delinquent poll tax penalty and interest. It is

our opinion that House Bill No. 76 releases any and all such penalties and interest on delinquent poll taxes if such delinquent taxes are paid within the life of said Act. Nor does the six per cent (6%) penalty apply to delinquent poll taxes under any conditions. Hence, no penalty will be collected on delinquent poll taxes prior to November 2, 1941.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Glenn R. Lewis
Glenn R. Lewis
Assistant

GRL:db:wc

APPROVED JULY 12, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman