



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN  
~~WILLIAM WILSON~~  
ATTORNEY GENERAL

Honorable Eugene Brady  
County Attorney  
Greenville, Texas

Dear Sir:

Opinion No. 0-4311

Re: Validity of action taken by  
independent school district's  
board of equalization in  
month of October.

We have your letter of April 15, 1942, requesting an opinion of this department, and which reads as follows:

"An Independent School District in this county organized under the general law through their duly appointed special tax assessor and collector assessed property located in said district for taxes based upon the value of the land as of January 1, 1941. A board of equalization was appointed by the trustees of the independent school district and met on October 15, 1941 for the purpose of equalizing taxes in the district. The taxpayers were duly notified of the time and place of the meeting of the equalization board and had due opportunity to appear before same on the date set. One taxpayer now contends that because the tax rolls should have been ready for collection on October 1st and the equalization board did not meet until October 15th the taxes are illegal and he is not bound to pay same.

"The statutes provide that the law as applicable to the collection of taxes of incorporated cities and towns shall be applicable likewise to collection of taxes of independent school districts. Articles 1043 and 1044 RCS provide for the collection and assessment of taxes in cities and towns. Article 1048 provides that the city council shall annually at their first meeting or as soon thereafter as practicable appoint three commissioners each a qualified voter, a resident and property owner of the city who shall be styled the board of equalization. At the same meeting said council shall fix the time for the meeting of such board. Article 1049 states 'The Board of Equalization shall convene annually at the time so fixed to receive all the assessment lists or books of the assessor of their city for examination,

correction, equalization, appraisalment and approval.' Article 1051 provides that any person may file with said board at any time before the final action of said board a complaint as to the assessment of his property and said board shall hear said complaint.

"The question presented here as I see it is must the Equalization Board of an Independent School District meet at any particular time during the year, or is this requirement met by the equalization board meeting at any time during the calendar year?

"It is generally held that the statutes that regulate the time when the assessor shall make out his rolls, and the time when the board of equalization shall certify to their correctness are directory and not mandatory. In the absence of any law decreeing when the assessment shall be made, or when the board of equalization shall meet, or when the rolls shall be prepared, these matters are under the control of the local authorities. If the only statutory requirement is that the taxes be levied during the year, delivery of the rolls to the collector may be made at any time during the year. 37 Texas Jurisprudence, 1012.

"The statutes heretofore quoted do not require the board of equalization to meet any particular time during the year. It only requires that the board shall convene annually at a time fixed by the governing body. This being true I think it would clearly follow that all else being regular the fact that the board of equalization did not convene until October 15 would not invalidate the taxes."

We agree with your conclusion and have little to add to the reasoning by which it is reached. We might mention that even though the time for the sitting of such a board of equalization be fixed in the manner that county commissioners' courts are required to meet as boards of equalization in the month of May of each year, such would not, in our opinion, invalidate the assessment. From Mr. Sutherland in his work on Statutory Construction (2nd Ed.), Section 612, page 1117, we quote:

"Provisions regulating the duties of public officers and specifying the time for their performance are in that regard generally directory. Though a statute directs a thing to be done at a particular time, it does not necessarily follow that it may not be done afterwards. In other words, as the cases universally hold, a statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory, unless the nature of the act to be performed, or the phraseology of the statute is such that the designation of time must be

considered as a limitation of the power of the officer."

Again this same author observes, in Section 611, at page 114:

"Those directions which are not of the essence of the thing to be done, but which are given with a view merely to the proper, orderly and prompt conduct of the business, and by the failure to obey the rights of those interested will not be prejudiced, are not commonly to be regarded as mandatory; and if the act is performed, but not in the time or in the precise mode indicated, it will still be sufficient, if that which is done accomplishes the substantial purpose of the statute."

This canon of statutory construction is illustrated by the case of *Graham v. Lasater*, 26 S. W. 472, holding that under *Sayles Civil Statutes*, Article 1517a, Subdivision 1, providing that the County Commissioners' Court shall convene and sit as a Board of Equalization on the second Monday in June, or "as soon thereafter practicable before the first day of July," does not render a continuation of their proceedings into July a nullity.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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

GRL:db:wc

APPROVED APRIL 24, 1942  
s/Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

Approved Opinion Committee By BWB Chairman