



THE ATTORNEY GENERAL  
OF TEXAS

Gerald C. Mann

~~XXXXXXXXXXXXXXXXXXXX~~  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

This Opinion overrules  
in part letter opinion  
to W.M. Porter dated  
2/12/38.

Hon. John M. Turner  
County Attorney  
Bee County  
Beeville, Texas

Opinion No. 0-4424  
Re: Penalty on delinquent taxes  
of independent school dis-  
trict.

Dear Sir:

We have received your letter of recent date in  
which you ask the opinion of this department upon the fol-  
lowing question:

"Can an independent school district  
legally charge ten per cent penalty on its  
own delinquent taxes?"

Article 7336, Vernon's Annotated Civil Statutes,  
provides in part as follows:

"If any person fails to pay one-half  
(1/2) of the taxes; imposed by law upon him  
or his property, on or before the thirtieth  
day of November of the year for which the  
assessment is made, then unless he pays all  
of the taxes (imposed by law on him or his  
property), on or before the thirty-first day  
of the succeeding January, the following  
penalty shall be payable thereon, to-wit:  
During the month of February, one (1%) per  
cent; during the month of March, two (2%) per  
cent; during the month of April, three (3%)  
per cent; during the month of May, four (4%) per  
cent; during the month of June, five (5%) per  
cent; and on and after the first day of July,  
eight (8%) per cent."

We quote from the opinion of the recent case of  
Love v. Spur Independent School District, et al, 143 S.W.  
(2d) 793:

"Article 7336, Revised Civil Statutes of  
1925, provided in effect that a penalty of 10%  
on the entire amount of delinquent taxes should  
accrue and be collected as penalty. Thereafter  
in 1934 article 7336 was amended by the Fourth  
Called Session of the Forty-third Legislature, c.  
10, §2, Vernon's Ann. Civ. St. art. 7336, and re-  
duced the penalty on delinquent taxes to 8%, but

the amendment became effective ninety days after the date of the adjournment of said session November 10, 1934. Article 7336d provides that the State or any county or other subdivision of the State 'except such cities, towns, villages, special school districts and independent school districts which do not adopt the provisions of this section' shall collect penalty on a different basis but this last article has no application to the case under consideration for the reason the record fails to show that its provisions were adopted by the City of Spur or the Spur Independent School District. Therefore the penalty would be calculated according to article 7336 and article 7336 as amended by the Forty-third Legislature.

"It will be noted from the delinquent tax record of the City heretofore set out that it charged 10% penalty for the years 1928 to 1938, inclusive, when under the law it should have charged only 8% penalty for the years 1935 to 1938, inclusive, which would have reduced the penalty due the City by \$1.97.

"The judgment in favor of the City for \$1.97 penalty in excess of the legal amount is a mistake which in our opinion comes under the doctrine of de minimis and does not require a reversal or modification of the judgment. Texas & N.O.R.Co. v. Stumberg, Tex. Civ.App., 115 S.W.(2d) 1126; Lewis v. Lewis, Tex.Civ.App., 125 S.W.2d 375; Wichita Falls & Oklahoma Ry. Co. et al v. Pepper, Tex.Civ. App., 101 S.W.2d 365. We also note that in 1930 the Spur Independent School District charged a penalty of but \$2.40 on delinquent taxes of \$48. This was to the defendant's advantage in the sum of \$2.40.

"An examination of the schedule of the delinquent tax record of the Spur Independent School District heretofore set out discloses that the School District charged 10% penalty up to and including 1933 but only 8% penalty thereafter and the defendant is entitled to no deduction therefrom."

You are respectfully advised that the penalty should be calculated according to Article 7336 before and

after its amendment. In other words, for the years prior to the amendment a penalty of 10% is authorized. For the years after the amendment a penalty on a graduated scale is authorized from February to July following the date of delinquency, and a penalty of 8% after the first day of July. The letter opinion to which you refer in your letter of request was one written February 12, 1938, to Honorable W. M. Porter. The author of the opinion cited Article 7336, as amended, providing for an 8% penalty. He closed the opinion with a statement that the district could charge a 10% penalty. We believe that the author inadvertently wrote 10% when he meant 8%. This statement is expressly overruled.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By George W. Sparks  
Assistant

GWS:LM:bt  
Approved March 4, 1942

Grover Sellers  
First Assistant  
Attorney General

Approved Opinion Committee  
By BWB, Chairman