



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Sidney Latham
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. 0-5210A
Re: Privilege of County Tax Assessor and Collector and City Manager to examine and use franchise tax reports under the stated facts.

In our opinion No. 0-5210, addressed to you, we said in answer to your last question:

"Consequently, we are of the opinion that any officer, be his selection and authority state-wide or confined to a district, county, municipality, or other political or geographical subdivision of this State may be included within this portion of Article 7089 (relating to the examination and use of franchise tax reports) provided he is charged with the enforcement of any of the laws of this State. We employ the word 'may' advisedly in the preceding sentence because we feel that the mere fact that one is an officer of this State charged with the enforcement of its laws does not confer a carte blanche authority upon him with respect to the examination of franchise tax reports. Rather, we feel, his privilege to make such an examination is limited by the requirement that the purpose of such examination be reasonably related to the enforcement of the statute or statutes within his charge. A demonstration of such relationship is, we feel, a necessary prerequisite to an examination of franchise tax reports by such an official. . . We shall, of course, be pleased at any time to give you our opinion as to whether any specific officer,

Honorable Sidney Latham, Page 2

or group of officers, is, with respect to any given law, included within this portion of Article 7089."

These remarks were directed to that portion of Article 7089, V. A. C. S., which forbids examinations, disclosures, or uses of franchise tax reports except "for information of any officer of this State charged with the enforcement of its laws, including the Comptroller of Public Accounts, State Auditor and the State Tax Commissioners."

In your letter of May 20, 1943, requesting an elaboration of these remarks, you state:

". . . .

"Specifically, the County Tax Assessor and Collector of Harris County, Texas, has requested permission to examine the franchise tax reports of numerous corporations owning property and otherwise doing business in Harris County, in quest of information intended to lead to the discovery of additional taxable property values for ad valorem tax purposes that might otherwise escape assessment in such county.

"The city manager of the city of Longview, Texas, has requested access to the franchise tax report of one particular corporation for the purpose of attempting to discover taxable assets of the corporation in question for the purpose of assessing same for city taxes. He quotes, in part, Section 45 of the Charter of the city of Longview, with reference to the duties of the city manager as follows:

"to see that the laws and ordinances are enforced."

"In the light of the above facts, and by way of elaboration upon your prior opinion above referred to, please advise this Department upon the following inquiries:

"1. Is the County Tax Assessor and Collector of Harris County entitled to examine

Honorable Sidney Latham, Page 3

franchise tax reports in this office for the purpose of discovering taxable values for ad valorem tax purposes that might otherwise escape taxation?

"2. In the event your answer to question number one is in the affirmative, may a general examination of the reports of all corporations owning property or otherwise doing business in Harris County, be permitted?

"3. Is the City Manager of the city of Longview, Texas, authorized to examine the franchise tax report of a corporation for the purpose of discovering taxable property for city tax purposes?

". . . ."

Under Chapters VII, VIII, IX, X and XI of Title 122 of the Revised Civil Statutes, county tax assessors and collectors are charged with a host of duties and responsibilities in connection with the discovering and assessing for State ad valorem taxes of property located within their respective counties. With respect to such duties and responsibilities we feel that these officials clearly are "officers of this State charged with the enforcement of its laws." Since the purpose of the request of the County Tax Assessor and Collector of Harris County is pertinent to his duties in connection with State taxes, we feel that he is privileged to examine the franchise tax reports of corporations doing business or owning property within his county. Consequently, the first two questions stated in your letter are answered in the affirmative. This conclusion is in accord with an opinion of a previous administration of this department, which opinion was written by Assistant Attorney General Maurice Cheek, dated December 31, 1931, and addressed to Honorable Moore Lynn. The fact that the use of such reports for the discovering and assessing of land for State ad valorem taxes may also result in such land being discovered and assessed for county, school or other local taxes in no way alters this conclusion.

Your third question raises a more serious problem. Cities and towns operating under the general laws are authorized to pass such ordinances as may be deemed proper for the levying, laying, imposing, assessing and collecting of taxes (Article 1041, R.C.S.), while home rule cities are authorized

Honorable Sidney Latham, Page 4

"to provide" for similar matters (Subdivisions 8 and 9 of Article 1175, R.C.S.). Although in levying such taxes municipal corporations act not by virtue of an inherent power (Coffee v. Castleberry, 258 S. W. 889, 272 S. W. 767), but rather by virtue of an authority delegated to them by the State (Ollivier v. City of Houston, 54 S. W. 940, cert. 93 Tex. 201, 54 S. W. 943), the taxes so levied and collected inure only to the benefit of the city or town involved, and the State has no direct interest therein. Moreover, the municipal officers charged with the levying and collecting of municipal taxes, the assessor and collector (where one exists, see Articles 977 and 1175(1) R.C.S.) and the board of equalization or other comparable body, have no duties in connection with any taxes which benefit the State or which are levied by State law. See Articles 1044-1060 R.C.S. While Articles 7337 and 7343 R.C.S. permit incorporated cities and towns to adopt the procedure established by Chapter X of Title 122 for the collection of delinquent taxes, such cities and towns proceed thereunder by way of adoption only and their proceedings are directed solely at the collection of municipal taxes. Thus the only points of contact between the State and taxes levied by municipalities are that the State delegates the power which makes possible such taxation and that the State permits incorporated cities and towns to adopt and utilize for their own purposes the machinery which the State has established for the collection of delinquent taxes. No municipal taxes are levied by State law; no suits therefor are maintained in the name of the State; no municipal taxes are levied or collected by officers of the State government; and no municipal officials aid in any way in the levying or collecting of State taxes. We feel that these contacts are too slight to enable us to say that the taxing authorities of a municipality are "officers of this State charged with the enforcement of its laws." This conclusion is in accord with an opinion of a previous administration of this department written by Assistant Attorney General Neal Powers, dated June 4, 1932, and addressed to Mrs. Jane Y. McCallum, and is in conflict with a like opinion written by Assistant Attorney General A. R. Stout, dated May 17, 1934, and addressed to Honorable W. W. Heath. The persuasiveness of the discussion accorded this problem in the former opinion is heightened by the fact that neither was this discussion challenged nor was this opinion either cited or overruled in the latter opinion.

Honorable Sidney Latham, Page 5

Consequently, even if we assume without discussion that Section 45 of the Charter of the City of Longview, quoted above, vests the City Manager with a direct interest in the assessment and collection of the taxes of that City, such assumption would avail him naught since no officer concerned solely with municipal taxes falls within the privileges accorded by Article 7089. Your third question is therefore answered in the negative.

Trusting that the foregoing fully answers your inquiries, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

[Handwritten signature]
APPROVED MAY 26, 1943

DEPUTY ASSISTANT
ATTORNEY GENERAL

By *[Handwritten signature]*
R. Dean Moorhead
Assistant

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