



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable C. C. Randle
County Attorney
Ellis County
Waxahachie, Texas

Dear Sir: Attention: Mr. F. L. Wilson, Assistant
County Attorney.

Opinion No. 0-6079

Re: In delinquent tax suits where citation
is by publication, how many times should
notice appear in the newspaper? And a
related question.

We have given careful consideration to your request
of recent date in which you ask the opinion of this department
upon the following questions:

"In delinquent tax suits where citation is by publica-
tion, how many times should notice appear in the newspaper?"

"In delinquent tax suits where citation is by publica-
tion, is it legal to take judgment on first Monday after
the expiration of 42 days from issuance of citation, or
should plaintiff wait till next term of court?"

Upon the first question you have called to our attention
certain provisions of the following articles and rules: Article
7345b, Sec. 3, Subd. 4, which provides for a citation to be
published once a week for two consecutive weeks in such a situation
as we have under consideration; Article 7342, which provides for
such a publication once a week for three consecutive weeks under
similar circumstances; and Rule 116 of the New Rules of Civil
Procedure, which provides generally for citations by publication
to be published once a week for four consecutive weeks.

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Upon the second question you have directed our attention to Articles 7342 and 7345b, wherein the former prescribes that the defendant should be cited to appear at the term of the district court; and the latter provides that the defendant should appear at the next term of court. You further refer us to Rule 114 of the Rules of Civil Procedure, in which the defendant is required to answer the first Monday after the expiration of forty-two days from the date of the issuance of citation.

We will discuss your questions together.

Rule No. 2 of the Rules of Civil Procedure provides in part:

"These rules shall govern the procedure in the justice, county, district, and appellate courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. . . . All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribe no rules of procedure in such cases, these rules shall apply."

Rule No. 110 of the Rules of Civil Procedure provides:

"Where by statute or these rules citation by publication is authorized and the statute or rules do not specify the requisites of such citation, or the method of service thereof, or where they direct that such citation be issued or served as in other civil suits, the provisions of these rules shall govern. Where, however, the statute authorizing citation by publication provides expressly for requisites of such citation or service thereof, or both, differing from the provisions of rules 114, 115 and 116, these rules shall not govern, but the special statutory procedure shall continue in force."

We are of the opinion that the above quotations rather firmly demonstrate that the proper procedure to be followed in delinquent tax suits is that found in our statutes upon this subject. We likewise so held in our opinion No. C-3948.

This then leaves the query of whether or not the procedure outlined in Article 7342 or Article 7345b controls. As heretofore pointed out, Article 7342 requires the citation to be published in some newspaper in the county once a week for three

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consecutive weeks, and provides that the defendant is commanded to answer and defend such suit at the _____ term of the district court. Article 7345b, Sec. 3, Subd. d, provides in part that the citation shall be published once a week for two consecutive weeks and not less than fourteen days prior to the first day of the term of court to which it is returnable, and that the defendant shall answer the first day of the next term of court in which the suit is filed.

This department in opinion No. O-4288, a copy of which is enclosed, held that Article 7345b controls over Article 7342.

In accord with this holding you are advised that in your situation you should follow Article 7345b, Sec. 3, Subd. d; that the citation should be published in some newspaper in your County once a week for two consecutive weeks; and that the defendant should appear and defend such suit on the first day of the next term of court in which the suit is filed.

Trusting that the foregoing answers your inquiries,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Robert O. Koch*
Robert O. Koch
Assistant

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ENCLOSURE

W. B. Shackberry
1944
(Acting)

