



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. W. P. Herms, Jr.
County Auditor, Waller County
Hempstead, Texas

Dear Sir:

Opinion No. 0-6194

Re: Whether the collection of delinquent taxes on Road and School Districts is barred by limitation after ten (10) years, and related questions.

In your letter of September 5, 1944, you request the opinion of this department on the following questions:

"1. Whether the collection of delinquent taxes on Road Districts and School Districts is barred by limitation after ten (10) years.

"2. If your answer to No. 1, above, is 'Yes,' should the tax collector disregard such delinquent taxes when making delinquent collections, or is it necessary that limitation be plead in court before such right can be exercised?

"3. Our most important concern in case the answer to No. 1, above, is 'Yes', is the manner in which the Tax Collector should handle the collection of such items of delinquent taxes."

Article 7223, V. A. C. S., 1925, as amended by Acts 1931, 42nd Leg., p. 419, Chap. 252 § 1, is as follows:

"That no delinquent taxpayer shall have the right to plead in any Court or in any manner rely upon any Statute of Limitation by way of defense against the payment of taxes due from him or her to the State, or any county, city, town, Navigation District, Drainage District, Road District, Levee District, Reclamation District, Irrigation District, Improvement District, School District and all other Districts;

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provided, that no suit shall be brought for the collection of delinquent taxes of a School District or Road District unless instituted within ten years from the time the same shall become delinquent."

This article, as applied to school districts, has been construed by the Amarillo Court of Civil Appeals in the case of Cook v. City of Booker et al., 167 S.W. (2d) 232 (no writ applied for) to sustain the plea of the ten (10) year statute of limitations. The answer to your first question is "Yes".

Article 5540, V.A.C.S., 1925, is as follows:

"The law of limitation shall not be available in any suit unless it be specifically set forth by the party who in his answer invokes it as a defense."

Under this article it is necessary for the delinquent taxpayer to properly plead any limitation to which he may deem himself entitled, which answers your second question.

Since your third question does not involve a question of law on which this department has authority to render an opinion, it is suggested that this situation be submitted to the County Attorney of Waller County for his suggestions and rulings.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED SEP 21 1944

George Bell
ATTORNEY GENERAL OF TEXAS

By

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CKR:AMM

