



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable J. A. Belger  
County Auditor  
Travis County  
Austin, Texas

Dear Sir:

Opinion No. 0-6293

Re: Is the University of Texas  
or the State of Texas lia-  
ble for the payment of de-  
linquent taxes upon the  
property described herein,  
and related questions.

We have received and considered your request for  
opinion dated November 22, 1944. We quote therefrom as fol-  
lows:

"Enclosed find a list of property situated  
in Travis County, Texas, which is owned by the  
University of Texas and delinquent for certain  
years for State and County taxes on the tax rolls  
of Travis County, Texas.

"The delinquent State and County taxes shown  
on said list accrued against the private owners  
of the property described, based upon legal and  
proper assessment made each January 1st, before  
the property was purchased by the University of  
Texas.

"This property was acquired by the State of  
Texas under the provisions of Chapter 137, Acts  
of the Regular Session, 37th Legislature (1921)  
(7 G.L. 266), as amended by Chapter 20, Acts 3rd  
Called Session, 38th Legislature (1923) (8 G.L.  
179), for the purpose of enlarging the campus of  
the University of Texas, in Austin. The property  
was paid for out of the appropriation made for  
said purpose by said Acts out of the General Fund  
of the State of Texas, and was turned over to the

control and management of the Board of Regents of the University of Texas after its acquisition for the purpose of erecting buildings thereon for the various activities at the University of Texas.

"Will you please advise me if the University of Texas, or the State of Texas, is liable for the payment of the delinquent State and County taxes due upon the property described in the enclosed list and purchased under authority of the above laws.

"If you hold that the University of Texas or the State of Texas is not liable for the payment of said delinquent State and County taxes, then will you please advise me if it is legal for the Assessor and Collector of Taxes of Travis County, Texas, to strike from the delinquent tax roll all property now owned and used by the University of Texas for all of the years for which State and County taxes are delinquent, by the issuance of cancellation certificates thereon.

"If your answer to the preceding question is affirmative with reference to the fact of striking said delinquent taxes from the delinquent tax rolls but negative as to the right of the Assessor and Collector of taxes to do so by the issuance of cancellation certificates, then please advise me what is the correct procedure to strike said delinquent taxes from the tax roll.

". . . ."

Section 6 of Chapter 137, Acts of the 37th Legislature, Regular Session, (1921), provides in part that:

"The Commission herein provided for shall take deeds in fee to each and every lot, block, piece or parcel purchased by them, said deed to be in the name of the Board of Regents of the University of Texas and their successors in office, for the use

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and benefit of the University of Texas and the State of Texas. . . . (Emphasis ours)

This Act was brought into question in the case of Cochran v. Cavanaugh, 252 S. W. 284. At page 286 the court said:

"The sole purpose for which the land is condemned is the public purpose of meeting the needs of the State University for the enlargement of its grounds. The property is dedicated to this use. The mere fact that this use may not be made immediately and that, until it is put to such use, the act authorizes its lease to private parties for a private use in no way changes its status. The act makes it mandatory that the revenue realized by these rentals shall become a part of the building fund of the University."

Therefore, since this property is public property used for public purposes, unquestionably it is exempt from taxation by Article VIII, Section 2, of the Constitution of Texas, and Article 7150, Section 4, Vernon's Annotated Civil Statutes, since the time of its purchase and dedication.

The taxes about which you inquire were delinquent at the time the property was acquired by the University. Article 7172, V.A.C.S., provides:

"All taxes upon real property shall be a lien upon such property until the same shall have been paid. . . ." (Emphasis ours)

However, the Supreme Court of Texas in Childress County v. State, 92 S. W. (2d) 1011, 1016, said:

"When the title to this land reverted to Childress County, the tax lien for State purposes became merged with the ownership of the land by the County. This property dedicated to a county exclusively for a public purpose, and having been sold by the county to individuals who failed to comply with the contract of sale, whereupon the title to the land reverted to the County, cannot be burdened with taxes due the State during the

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time it was privately owned. 61 O.J. 945, and cases cited; 26 R.C.L. 299, and authorities cited." (Emphasis ours)

See also State v. Locke, 219 P. 790, 30 A.L.R. 407, where it is said:

"When property is acquired by the State in its sovereign capacity, it thereupon becomes absolved, freed, and relieved from any further liability for taxes previously assessed against it, and which are unpaid at the time it becomes so acquired; that, from the moment of its acquisition, the power to enforce the lien is arrested or abated. The claim of the State for such taxes becomes merged in its ownership of the fee. To consider it further burdened with such lien, and to permit it to be subsequently sold for the payment thereof, results in the State selling its own property to pay itself. . . . Our conclusion that property acquired by the State is automatically freed from further liability for taxes previously assessed against it is supported by the great weight of authority from other jurisdictions."

It was held in Walsh v. University of Texas, 169 S. W. (2d) 993 (writ of error refused), that property belonging to the University of Texas is the property of the State.

Since the lien for taxes on the property has merged with the title, the property is not now subject to the lien, and cannot be seized or sold for such taxes. You are advised also that neither the University of Texas nor the State is obligated to pay these taxes. To require either to pay them would be merely transferring the money from one pocket to another, and would be a futile thing.

This is not to say, however, that the taxes thereby become cancelled or removed from the tax rolls of the county. We have heretofore held, in Opinion No. O-4956, that:

"Neither the Constitution nor the statutes, however, release or authorize the release or cancellation of ad valorem taxes which accrued prior

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to the date on which such property is, by such political subdivision, devoted to public use."

Article 7263, V.A.C.S., provides for the making by the tax collector of a list of delinquent or insolvent taxpayers, and that:

"The tax collector, upon the certificate of the commissioners court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due by the persons, firms, companies, or corporations certified to by the commissioners court, as above provided for."

Article 7260, Section 5, V.A.C.S., provides:

"The allowance to a Tax Collector of credit for the unpaid taxes shown on his delinquent and insolvent lists prepared under Articles 7263 and 7336 shall not absolve any taxpayer or property appearing upon either of said lists from liability for the payment of such taxes, nor absolve the Tax Collector from the duty of collecting same, and the provisions of Articles 7263, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274, and 7336 pertaining to the levy upon and seizure and sale by the Tax Collector of personal property to enforce the payment of taxes shall be applicable to the enforced collection of such taxes. . . ."

With respect to the enforcement of the liability of the taxpayer, Article 7272, V.A.C.S., provides:

"All real and personal property held or owned by any person in this State shall be liable for all State and County Taxes due by the owner thereof, including tax on real estate, personal property and

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poll tax; and the Tax Collector shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding; . . ."

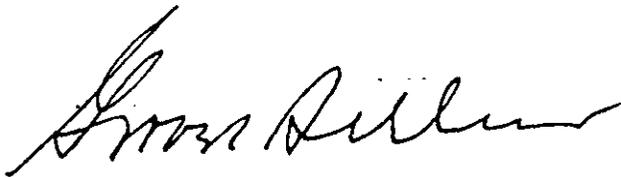
These statutes indicate a clear Legislative intention that taxes shall not be released or cancelled, but that the State's rights shall be protected in every way possible. The taxes which became due upon the land in question prior to its acquisition by the University remain outstanding and cannot be stricken from the rolls. Recourse must be had upon the personal liability of the persons who were the owners of the property on the first day of January of the years for which the taxes are delinquent. See *Dauciger v. State*, 166 S. W. (2d) 914, by the Supreme Court.

Trusting that this fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Arthur L. Moller*  
Arthur L. Moller  
Assistant



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