OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. S. Munson, Jr.
County Attorney
Wharton County
Wharton, Texas

Dear Sir:

Opinion No. O-6865
Re: Under the facts submitted, what amount of penalty, interest and costs should be charged against a member of the Armed Forces on taxes on property owned by him?

We have your request for opinion, which reads as follows:

"The Tax Collector of this County has requested me to write you relative to the collection of penalties and interests due by a certain individual who is now a member of the United States Armed Services, the circumstances surrounding the case are as follows: A number of years ago a man by the name of C. D. Kemp, believing that some effort might be made by some of his creditors to levy upon a house and lot then owned by him in the City of Wharton and in which he lived conveyed the property to a friend and verbally requested him to hold it in his name until Mr. Kemp's son, who was then a young boy reached the age of 21 years, at which time the property was to be conveyed to the boy. Mr. Kemp and his wife and son continued to live on the property up until the death of Mr. Kemp and his wife and son still live there except that the boy is now in the Navy. A short time ago the property was transferred to the boy in accordance with his father's request and is now on the tax rolls in his name. During all the period of time that it was so held by the friend no taxes were paid by any one and quite a large

amount of taxes have accumulated on the property during this period of time. The boy is now desirous of paying off the taxes out of his army pay and the question arises as to the amount of penalties, interests and costs that will be charged against him.

"I do not believe that this situation would come under the terms of Article 7336j of the Revised Statutes for the reason that the boy has come into the possession of the legal title to the land since he joined the Navy, however it is possible that he would come under the terms of Article V of the Soldiers and Sailors Civil Relief Act of 1940 as amended and especially paragraph (4) of Section 500, which reads as follows: "No Penalty for Non-Payment of Taxes - Interest Limited. Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such non-payment. Any lien for such unpaid taxes or assessments shall also include interest thereon.'

"There is no question of a forced collection or a foreclosure sale for taxes as the taxes will be paid voluntarily, however the Tax Collector is anxious that the boy be accorded every right to which he is entitled to legally. Please advise me about this at your earliest convenience."

You are correct in your belief that this situation is not covered by Article 7336j, V.A.C.S. The material parts of this article are:

"There is hereby released to all members of the Armed Forces of the United States of America . . . . all interest and penalties <u>accruing subsequent to their entry into such service</u>, on State and county ad valorem taxes on <u>property listed on the tax rolls of any county in the name of any of such members of the Armed Forces</u> . . . . <u>prior to the time they joined such Armed Forces</u> . . . . ;

> providing that the release of such interest and penalties shall extend for the duration of World War II, and providing that the respective members of such Armed Forces . . . . shall be allowed a period of not to exceed six (6) months after the cessation of hostilities in which to pay without penalty and interest their taxes which have accrued and which shall accrue during the duration of the war." (Emphasis ours)

As we pointed out in Opinion No. O-5566, when a person is (a) a member of the Armed Forces of the United States of America or their auxiliaries, or a member of the Armed Forces Reserve or their auxiliaries, and (b) prior to the time such person joined same, (c) there was listed in his name on the tax rolls of the county property subject to ad valorem taxes, and (d) said ad valorem taxes, subsequent to such entry into the above mentioned forces, became delinquent, then (e) all interest and penalties on said delinquent taxes would be released by operation of said Article 7336j to said person for the duration of the war and for not more than six months after the cessation of hostilities. In that opinion we further held that the release does not apply to the costs which accrued in connection with said taxes. Since the property in question does not meet the requirements set out in this statute, particularly in that it was not listed on the tax rolls in the name of this sailor prior to the time he joined the Navy, no benefits can accrue to him thereunder.

It would appear that Article V of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C.A. Sec. 560, et seq.) is likewise limited in its application. Paragraph (1) of this Article reads, in part:

> "The provisions of this section shall apply when any taxes or assessments . . . . whether falling due prior to or during the period of military service, in respect of . . . . real property owned and occupied . . . . by a person in military service or his dependents <u>at the commencement of his period of military service and still so occupied by his dependents</u> are not paid." (Emphasis ours)

The question arises whether this property was <u>owned and occupied</u> by the sailor at the commencement of his period of service.

From your statement, it is apparent that the friend to whom C. D. Kemp deeded the property held naked legal title thereto. He was holding it in trust for Kemp's son, who had the beneficial or equitable title thereto. In addition to the equitable title, Kemp's son had possession of the property at the commencement of his period of military service. Cooley, Taxation (1924) in Section 677 states:

> "It has been held that the term 'property' includes an equitable as well as a legal interest. So the word 'owned' in an exemption statute is generally construed to comprehend an equitable as well as a legal ownership."

This statement is borne out by the following cases:

State ex rel. City of St. Louis v. Baumann, 348 Mo. 164, 153 SW (2) 31.
Engineering Society of Detroit v. City of Detroit, 308 Mich. 539, 14 NW (2) 79.
Commissioner of Taxation v. Thayer, Bradley Co., 291 Mass. 198, 197 NE 47.

It is our opinion that such property was "owned and occupied" by Kemp's son, within the meaning of the quoted portion of the Soldiers' and Sailors' Civil Relief Act at the commencement of his military service.

You are therefore advised that if the serviceman's mother is his dependent, and if she now occupies the property, paragraph (4) of Sec. 560 of 50 U.S.C.A. applies to the property under consideration, and that the taxes shall bear interest at the rate of 6 per cent per annum only, and no other penalty or interest shall be incurred by reason of such nonpayment.

Trusting that the foregoing sufficiently answers your inquiry, we are,

Very truly yours

ATTORNEY GENERAL OF TEXAS

Arthur L. Moller

Arthur L. Moller
Assistant

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APPROVED
OPINION
COMMITTEE
BY Sam
CHAIRMAN