



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. W. A. Johnson
County Attorney
Tom Green County
San Angelo, Texas

Dear Mr. Johnson:

Opinion No. 0-7469

Re: Does the Junior College District which is co-extensive with the boundaries of Tom Green County have the authority to tax the intangible assets of railroad rolling stock?

You present for the opinion of this department the question contained in your letter of October 11, 1946, which we quote as follows:

"The San Angelo Junior College District has been formed under the provisions of Article 2815-H of the Revised Statutes of 1925, as amended.

"The boundaries of the San Angelo Junior College District are co-extensive with the boundaries of Tom Green County.

"The Panhandle & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company operate lines of railway in Tom Green County, Texas.

"By election, the Junior College District is to be supported by a tax of \$.20 upon the \$100.00 valuation.

"I request that you advise me as promptly as convenient whether the Junior College District tax properly should apply to and be collected on the intangible assets and the rolling stock of the railroads."

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While not directly involved in your opinion request, we deem it advisable to first dispose of the question as to whether or not the fact that the Junior College District is coextensive with the boundaries of Tom Green County has any relevancy to the question presently to be considered, namely, the authority to assess the rolling stock of railroads in the same manner as the tax collector assesses the rolling stock of railroads for State and county purposes as provided in Art. 7113, V. R. C. S., and Art. 7169, V. R. C. S. We dispose of this question by saying that in our view it is of no significance that the boundary lines of the Junior College District are coextensive with the boundary lines of Tom Green County. True, the entire county is embraced in the Junior College District, but nevertheless it is a district, and the law governing districts and not counties is applicable.

This question seems to have been disposed of by the case of State v. Houston & T. C. Ry. Co., 209 S. W. 820, from which we quote as follows:

"While it is true that the rolling stock and intangible property of the defendant railroad company is property and taxable as such in the manner and place, and for the purposes, prescribed by law, it by no means follows that it is taxable in said navigation district for its use and benefit. The fact that its boundaries are the same as those of Harris county is immaterial. The 'Harris County Houston Ship Channel Navigation District of Harris County' has no power of taxation, except such as is expressly conferred upon it by the law of its creation, and in determining such power such law must be strictly construed. . . ."

Having concluded that the common boundaries of the Junior College District with that of Tom Green County is of no significance in the determination of this question, and that the same does not make it any more or less a district, we start with the premise that the district being a creature of the Legislature can exercise only such powers, taxation or otherwise, as conferred upon it by the Legislature either expressly or by clear implication. We look first to see whether or not the statute which authorizes the creation of Junior College districts confers upon them the authority to assess and collect taxes against the rolling stock of railroads traversing the district.

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There is found in Sec. 7, Art. 2815h, V. R. C. S., the provision authorizing the assessment and collection of taxes by Junior College districts, which is as follows:

". . . The issuance of the bonds for Junior College purposes, and the provision of the sinking fund for the retirement thereof, and the payment of interest and the levying of taxes for the support and maintenance of the Junior College, shall in so far as same is applicable, be in accordance with the general election laws and the laws governing the issuance of bonds and the levying of taxes in the Independent School District, provided the total amount of tax levied for Junior College purposes shall never exceed twenty (20) cents on the One Hundred Dollars of property valuation within said District, based on the valuation fixed by the Board of Equalization of the Junior College District; provided further that if no taxes have been assessed and equalized in said Junior College District at the time of the issuance of such bonds, then the basis shall be the valuation in the Independent School District. If its boundaries are not the same, then such valuation shall be based on the valuation fixed by the Commissioners Court for State and County taxes in such County within the limits of the Junior College District."

Does this provision of the statute authorize a Junior College district to impose a tax upon the rolling stock of railroads? We think not. In truth there is evidence of legislative intent to negative such authority upon the part of such districts. It is observed that the authority to levy taxes is in accordance with the general law governing the issuance of bonds and the levying of taxes in independent school districts, and that it is to be upon property within said districts. No such authority is conferred upon independent school districts by general law.

A few cases will suffice to support our position. In the case of Bell County v. Hines, 219 S. W. 556, (W.E.R.) it is said:

"Appellant admits, and properly so, that the intangible assets and rolling stock of a railway company are not subject to taxation by a special road district."

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Another case in point, except that the authority of the city to tax the rolling stock of a railway company is involved, is *Gulf, Colorado Ry. Co. v. City of Dallas*, 16 S. W. (2d) 292, (Ccm. App.):

"The Legislature originally (Act Aug. 21, 1876 (Laws 1879, c. 157, [19]) subjected rolling stock of railway companies to taxation by cities and towns by the apportionment method, and subsequently repealed the same in the adoption of the Revised Statutes of 1879, and later, by the passage of the Act of March 28, 1885 (Laws 1885, c. 63), expressly exempted railway companies from the necessity of making rendition of its rolling stock to incorporated cities and towns. We think such action negatives the grant of authority to the city of Dallas which is claimed to exist in this case to tax the rolling stock of a railway company, eventhough the same was situated within the city on January 1st, and so remained for a definite time.

"The Legislature no doubt concluded that it would not be the exercise of a sound policy to subject rolling stock of a railway company to taxation by cities and towns along their lines because of the confusion which would result from efforts of different municipalities to determine the situs of such property due to its transitory nature. While switch engines may have more permanency in their location than other rolling stock, yet all locomotives belonging to a railway company are of necessity a part of its rolling stock, the location of which is subject to be changed from time to time. The situs of so much of rolling stock belonging to railway companies was indefinite and uncertain that the Legislature was justified in classing it all as a unit for purposes of taxation. It unquestionably had the authority to determine the situs of rolling stock for purposes of municipal taxation. The fact that isolated rolling stock might in some instances appear to have a fixed location is not sufficient to invalidate the classification thus made.

"In the absence of a statute defining the taxable situs of this property otherwise, it was only taxable at the domicile of the railway company."

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We believe the foregoing sufficient to indicate the absence of legislative intent to authorize Junior College districts to impose a tax upon the rolling stock of railroads traversing the districts, and this regardless of whether or not the boundaries of the districts are the same as the counties.

You are therefore advised that it is the opinion of this department that Junior College districts do not have the power and authority to levy and collect taxes upon the rolling stock of railroads traversing the district and upon their intangible assets.

We appreciate your conforming to the statutes in submitting a brief with your opinion request, which has been helpful to us in the preparation of this opinion.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

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LPL:AMM

APPROVED OCT 29 1946

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ATTORNEY GENERAL

