



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

January 24, 1947

Honorable C. H. Cavness      Opinion No. V-33  
State Auditor  
Austin, Texas

Re: If there is no statutory or constitutional limit on ad valorem tax levies which can be made in Texas by cities, school districts, and irrigation districts, based on assessed valuations required by law to be 100 per cent of the actual valuation, what would be the legal manner in which any such limits could be imposed?

Dear Sir:

This Department has received your request for an opinion in answer to the following question:

"If there is no statutory or constitutional limit on ad valorem tax levies which can be made in Texas by cities, school districts, and irrigation districts, based on assessed valuations required by law to be 100 per cent of the actual valuation, what would be the legal manner in which any such limits could be imposed?"

The general rule concerning the power of the State to impose taxes is that it is an inherent governmental power, and the source is neither from the Federal or State Constitutions but is an attribute of sovereignty. The general rule is well stated in the case of *Clegg v. State*, 42 Texas, 605, 608, as follows:

"The taxing power is a power inherent in sovereignty, and without which constitutional government cannot exist. It is vested in the Legislature by the general grant of legislative power whether specifically enumerated in the Constitution among the powers to be exercised by it, or not. The constitutional provisions in reference

to it, therefore, are more usually intended and understood as limitations and restrictions upon its exercise, than as the direct grant of the power to the Legislature."

The same rule is expressed in the case of *Stratton v. Commissioners' Court*, 130 S. W. 1170 (error refused), wherein the Court held in part as follows:

"The power to tax is an attribute of sovereignty, and the extent to which this power may be exercised for governmental purposes finds its only limitation in the Constitution. Unless restrained by the Constitution, not only is this power unlimited in its reach as to subjects, but it recognizes no limits, and may be carried to the extent of exhaustion and destruction. . . .

"The general rule of constitutional law that a sovereign power conferred by the people upon one branch of the government cannot be delegated applies with peculiar force to the case of taxation. The taxing power is vested by the Constitution in the Legislature; and within that department of government lies the authority to prescribe the rules of taxation, and to regulate the manner in which those rules shall be given effect. The Legislature must in every instance prescribe the rules under which taxation may be laid. It must originate the authority under which, after due proceedings, the tax collector demands the contribution; but it need not prescribe all the details of action, nor even fix with precision the sum to be raised or all the particulars of its expenditure.

"But there is one seeming exception to the general rule that the Legislature may not delegate any portion of its authority, which relates to municipal corporations. Such corporations are a part of the machinery of state government, and the authority given them by the Legislature frequently extends to taxation; and in many cases the state does not go beyond prescribing rules of limitation within which for municipal purposes the local authorities of such corporations may levy taxes, but it has full reserved power, nevertheless, to limit or recall the delegation at pleasure. . . ." (Emphasis added)

Based upon the foregoing principles of law, where

no constitutional limitations or restrictions have been enacted as to the limit of the taxing power of the governing bodies of cities of various classes, school districts of various classes, and irrigation districts of various classes, the Legislature has the sole right to prescribe or impose a limit of the tax to be levied by any of the foregoing municipal corporations, provided, however, that the tax limits as heretofore provided by the Legislature by statutory enactment applicable to any of the foregoing municipal subdivisions cannot by a subsequent act of the Legislature be decreased so as to impair the legal obligations incurred by such municipal subdivisions for the payment of which a taxable limit has already been fixed by the Legislature.

**SUMMARY:** Where the Constitution of Texas provides no legal limit on ad valorem taxes which can be levied by cities, school districts, and irrigation districts, then the Legislature of Texas may impose such limit as it sees fit, provided the obligations of existing legal contracts incurred under a prior statutory limit fixed by the Legislature may not be impaired.

Yours very truly

ATTORNEY GENERAL OF TEXAS



By

C. K. Richards  
Assistant

APPROVED JAN. 24, 1947



ATTORNEY GENERAL

OHR/JOP:jrb

Approved Opinion Committee  
By EWB, Chairman