



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

May 6, 1953

Hon. E. H. Thornton, Jr., Chairman
State Highway Commission
Austin, Texas

Letter Opinion No. MS-30

Re: Authority of the Highway Commission to apportion voluntarily tendered registration fees, unlawfully collected, to the proper counties.

Dear Sir:

Your request for an opinion reads in part:

"Subject to the approval of the Attorney General, the County Judge of a Texas County has offered to this Department motor vehicle registration fees collected by the Tax Collector of his County for the registration of motor vehicles owned by residents of other counties, contrary to the provisions of Article 6675a-2 and Article 6686, Subsection (e).

"The fees collected by said County through such illegal registrations, and which fees are now tendered to this Department, should have been paid into other Texas counties and apportioned between such counties and this Department, as provided by Article 6675a-10, and, if you approve, we will accept and apportion such money between the proper counties and this Department."

Section 2 of Title 116, Chapter 1, Vernon's Annotated Civil Statutes, 1925, deals with regulation and registration of motor vehicles. The statutes thereunder provide for owners of the motor vehicles to apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each vehicle owned by him. They further provide for the collection of registration fees by the County Tax Collector and an apportionment of the funds between the county and the State Highway Department.

In the past this office has stated that the County Tax Collector acting within the scope of these registration laws is merely the agent of the State Highway Department. Atty. Gen. Op. No.

O-2050 (March 18, 1940). The duty of enforcing the provisions of this law is imposed upon the Highway Department. Atty. Gen. Op. No. V-234 (June 5, 1947). In 1925 the Supreme Court of Texas in Robbins v. Limestone County, 114 Tex. 345, 268 S.W. 915, had before it the question of the constitutionality of the registration laws. The Court in sustaining the validity of the legislative enactment stated in part on page 920:

"We do not deem it necessary to state the provisions of the Highway statutes. They do, of course, create an agency in which are vested powers to formulate and execute plans and policies for the regulation, construction and maintenance of the comprehensive system of State highways and public roads.

"Formerly, under the laws of this State, these powers were exercised by the commissioners' courts but, as it was constitutionally authorized to do, the Legislature created another agency, to-wit, the State Highway Commission, and invested it with certain powers and functions, same to be performed and executed in conjunction with other agents and agencies of this State. The powers here bestowed by the Legislature are not different from those formerly vested in the commissioners' court, which are in no sense a delegation of legislative authority or a delegation of the power to suspend laws."

The fees levied by virtue of the registration laws, presently Articles 6675a-1 through 6686, V.A.C.S., are regulatory and in the nature of a toll for the use of the highways of this State. Payne v. Massey, 145 Tex. 237, 196 S.W.2d 493. The spirit of these statutes and the above cited decisions is that, in the field of public roads and highways, the public trust reposes in the Texas Highway Commission. The collection of the registration fees is an incident of this trust delegated to the respective counties of this State. However, moneys collected by the county from a non-resident Texas motor vehicle owner are unlawfully collected. Miller v. Foard County, 59 S.W.2d 277 (Tex. Civ. App. 1933).

There is no legal inhibition upon the Highway Department precluding its acceptance of registration fees voluntarily tendered by the county which had unlawfully collected such fees and then properly disbursing such fees and apportioning same according to the registration laws. It is our opinion that the Highway Department is the proper agency to accomplish such an objective.

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The opinion is predicated upon the assumption that the county voluntarily tendered the moneys, that such moneys represented unlawfully collected registration fees, and the appropriate county officials (presumably the county's commissioners' court) authorized the payment to the Highway Commission.

Yours very truly,

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By 
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