



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

April 20, 1953

Hon. Fred C. Brigman, Jr. Opinion No. S-31  
County Attorney  
Uvalde County  
Uvalde, Texas

Re: Legality of the county attorney accepting private employment to maintain an injunction action adverse to the collection of certain taxes by an independent school district.

Dear Sir:

In substance you have asked this office for its opinion on the following question:

May a county attorney represent a private client in a suit to enjoin an independent school district from collection of a certain tax?

There is a strict limitation on the unofficial employment of a county attorney in Article 32 of the Code of Criminal Procedure of Texas, which provides:

"District and county attorneys shall not be of counsel adversely to the State in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the State in any case in which they have been counsel for the State."

In the case of Love v. City of Dallas, 120 Tex. 351, 40 S.W.2d 20, 26 (1931), the Supreme Court said:

"School districts are local public corporations of the same general character as municipal corporations. . . . They are defined as quasi-municipal corporations, and derive their powers by delegation from the state. They are state agencies, erected and employed for the purpose of administering the state's system of public schools."

In the case of Treadaway v. Whitney I.S.D., 205 S.W.2d 97 (Tex.Civ.App. 1947), in deciding that plaintiff could not hold the school district liable for the negligence of its agent school bus driver, the court said:

"Just because the services rendered in this respect are performed within the limits of the city does not make such functions local in nature but their effect and importance are statewide and are performed for the benefit of all the people. There are many respects in which a city can act in a proprietary capacity, but it is hard to imagine how a school district could act in such a capacity, the purpose for which it is created being purely governmental, and when carrying out the functions for which it was thus created it could act only as an agent of the state. . ."

The court in the case of Southwestern Broadcasting Co. v. Oil Center Broadcasting Co., 210 S.W.2d 230 (Tex.Civ.App. 1947, error ref. N.R.E.) says:

"An independent school district is a quasi-municipal corporation. Under the law it is entrusted with the duty of managing the schools to the extent of the power delegated. It has been said that the public school system is a part of the State Government. Mumme v. Marrs, 120 Tex. 383, 40 S.W.2d 31."

Article 7343, Vernon's Civil Statutes, provides in part:

". . . Independent school districts may collect their delinquent taxes as above provided for cities and towns. . . The school board may, when the delinquent tax lists and records are properly prepared and ready for suits to be filed, instruct the county attorney to file said suits. If the school board instructs the county attorney to file said suits and he fails or refuses to do so within sixty days the school board

Hon. Fred C. Brigman, Jr., page 3 (S-31)

may employ some other attorney of the county to file suit. The county attorney, or other attorney, filing tax suits for independent school districts, shall be entitled to the same fees as provided by law in suits for State and county taxes. . ."

It is the opinion of this office that the collection of a tax levied by an independent school district is an act of a State agency, and therefore the act of the State, and thus if the county attorney should be employed by private clients to enjoin the collection of such tax he would be "of counsel adversely to the State" in contravention of Article 32, V.C.C.P.

SUMMARY

The collection of a tax levied by an independent school district is an act of the State. Article 32, V.C.C.P., prohibits a county attorney being employed as counsel adversely to the State. Therefore, a county attorney may not be employed as counsel for a private client to enjoin the collection of a tax levied by an independent school district.

Yours very truly,

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

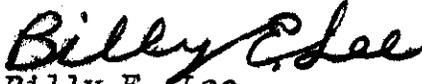
Willis E. Gresham  
Reviewer

Robert S. Trotti  
First Assistant

John Ben Shepperd  
Attorney General

BEL:am

JOHN BEN SHEPPERD  
Attorney General

By   
Billy E. Lee  
Assistant