



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 6, 1962

Honorable R. E. (Dick) Rudeloff
County Attorney
Bee County
Beeville, Texas

Opinion No. WW-1488

Re: When delinquent tax suits are dismissed for lack of prosecution by the judge of the district court in which they are pending, on the court's own motion, and plaintiffs are ordered to pay costs of court, what are such costs, if any, and to what fees are the various county officers entitled?

Dear Mr. Rudeloff:

You have asked the opinion of this office as to the payment of fees to district clerks, sheriffs, county attorneys and other officers when a delinquent tax suit has been dismissed for lack of prosecution, by the judge of the district court in which such suit is pending, on the court's own motion, and plaintiffs are ordered to pay costs of court.

Article 7332, Vernon's Civil Statutes, establishes the fees payable to the various officers. Article 7333, Vernon's Civil Statutes, further provides that such fees shall be taxed as costs against the lands to be sold on a judgment for taxes and paid out of the proceeds of sale of same, after the taxes, penalty and interest due therein are paid, and in no case shall the State or county be liable therefor. It is thus clear that if the various officers are to receive fees, they can only come from the sale of the lands certified as being subject to delinquent tax sale. Grant v. Ellis, 50 S.W.2d 1093 (Comm.App., 1932). Also see Attorney General's Opinion No. O-2938 (1941), a copy of which is enclosed.

In the facts submitted in your opinion request, you state that the delinquent tax suits involved were filed by the Beeville Independent School District. Article 7343, Vernon's Civil Statutes, governs the fees payable in such

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circumstances. Article 7343 makes applicable the rules set forth in Articles 7332 and 7333. Therefore, an independent school district or common school district has the same exemption from liability for costs as does the State and county. Electra Independent School District v. Waggoner Estate, 140 Tex. 483. 168 S.W.2d 645 (1943); Sour Lake Independent School District v. Easterling, 142 S.W.2d 237 (Civ.App., 1940, error ref.); Whelan v. State, 254 S.W.2d 558 (Civ.App., 1953, no writ history).

Although the district court has dismissed the delinquent tax suits for want of prosecution and has entered judgment assessing costs against the plaintiff taxing authority, such judgment as to costs is void. Grant v. Ellis, supra.

After an examination of the cases cited above and other citations contained therein, it is the conclusion of this office that the costs to which the various officers of the county would be entitled in a delinquent tax suit which is prosecuted to final judgment and sale, may not be collected when such suit is dismissed.

SUMMARY

When delinquent tax suits are dismissed and the plaintiff taxing authority is ordered to pay costs of court, such judgment of the court is void and no costs are payable.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
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Assistant

MLQ:ms

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APPROVED:

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