



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 6, 1988

Honorable Bob Bullock
Comptroller of Public Accounts
L.B.J. State Office Building
Austin, Texas 78774

LO-88-79

Dear Mr. Bullock:

We have received several inquiries as to whether a state agency is empowered to pay the attorney tax imposed by section 191.142 of the Tax Code. That section provides:

- (a) A tax is imposed on each attorney.
- (b) The tax rate is \$110 per year to be paid in advance.

"Attorney" is defined as "a person licensed to practice law in this state."

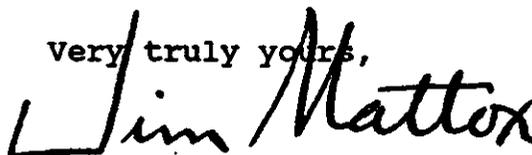
It has been suggested that Attorney General Opinion JM-313 (1985) prohibits an agency's payment of the tax at issue here. In that opinion, we said that a local prosecuting attorney was authorized "to pay the State Bar dues of assistant prosecuting attorneys only as additional compensation, and not as an expense of the office." The opinion distinguished the payment of bar dues from payment of expenses for "additional training and/or specialization for additional duties." The opinion contrasted the payment of bar dues with the payment of notary license fees because the latter is "directly and substantially related to the performance of the agency's governmental function," whereas the former constitutes only the "minimum qualifications for public employment."

With regard to the attorney tax, it should be noted that it is a special assessment applicable only to the 1988 and 1989 tax years. It will expire in 1990. Tax Code § 191.145. Neither an attorney's license nor his membership in the State Bar is affected by his failure to pay the tax. Thus, we cannot say that, like the payment of bar dues, payment of the tax constitutes "minimum qualifications for public employment."

Honorable Bob Bullock
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Page Two

Likewise, the attorney tax, like the notary license fee, is "directly and substantially related to the performance of the agency's governmental function." So long as an attorney is prohibited by his agency from practicing law outside the confines of state employment, payment of the tax is of benefit solely to his employer rather than to himself. We conclude therefore that a state agency is constitutionally permitted to pay the attorney tax imposed by section 191.142 of the Tax Code, for any attorney in its employ on June 1, 1988, the date on which the tax became due.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, sweeping initial "J".

J I M M A T T O X
Attorney General of Texas

JAM/er
ID#3981