



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom Seay
County Attorney
Potter County
Amarillo, Texas

Dear Sir:

Opinion No. 0-1283

Re: What fees is a county attorney entitled to where he intervenes for the state and county in a tax suit filed by an independent school district, under Articles 7332 and 7345b of the Revised Civil Statutes of Texas?

We are in receipt of your letter of August 18, 1939, in which you request an opinion of this Department as to what fees a county attorney is entitled to under Article 7332 and Article 7345b, Revised Civil Statutes, where he intervenes for the State and county in a suit for delinquent taxes which was filed by an independent school district.

Prior to 1931 Article 7332 of the Revised Civil Statutes read in part as follows:

"Other fees -- The county attorney or district attorney shall represent the State and county in all suits against delinquent taxpayers that are provided for in this law, and all sums collected shall be paid immediately to the county collectors. In all cases the compensation for said attorney shall be five dollars for the first tract in one suit, and one dollar for each additional tract involved in the same suit; * * *

It is to be noted that this statute used the term "provided for in this law". The law referred to was Chapter 10 known as "Delinquent Taxes" which provided in Article 7326 for the bringing of suits to foreclose

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tax liens.

Article 7333 reads as follows:

"Fees taxed as costs -- In each case such fees shall be taxed as costs against the land to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon are paid, and in no case shall the State or county be liable therefor."

Article 7332 as amended in 1931, reads in part, as follows:

"Other fees -- The County or District Attorney shall represent the State and County in all suits against delinquent tax-payers, and all sums collected shall be paid over immediately to the County Collector.

"Before filing suits for the recovery of delinquent taxes for any year, notice shall be given to the owner or owners of said property as is provided for in Article 7324 of the Revised Civil Statutes of Texas, 1925, as amended by Chapter 117, Page 196, Acts of the Forty-second Legislature, Regular Session. The fees herein provided for shall not accrue to nor shall the various officers herein named be entitled thereto in any suit unless it be proved that notice has been given to the owner for the time and in the manner provided by law.

"In all cases, the compensation of said Attorney shall be Two (\$2.00) Dollars for the first tract and One (\$1.00) Dollar for each additional tract up to Four (4), but said fee in no case to exceed Five (\$5.00) Dollars. And provided that in any suit brought against any individual or corporate owner, all past due taxes for all previous years on such tract or tracts shall be included; and provided, further that where there are several lots in the same addition or subdivision delinquent, belonging to the same owner, all said delinquent lots

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shall be made the subject of a single suit."

It is to be noted that the term "provided for in this law" was left out of this amended act and it now provides that the county and district attorney shall represent the state and county in all suits against delinquent taxpayers. Paragraph 2 of the amended Article is concerned with notice in the filing of suits for the recovery of delinquent taxes. Paragraph 3, however, starts off with the term "in all cases". There can be no question that the compensation schedule set out for county or district attorneys in Article 7332 as amended applies in all cases, regardless of whether originally filed by the county attorney for the state and county or intervened into by said county or district attorney. This Act places the duty upon the county or district attorney to represent the state and county in all suits against delinquent taxpayers and sets up the fees that he shall receive for such representation. Where a county or district attorney intervenes for the state and county he certainly is representing the state and county in a suit against a delinquent taxpayer regardless of the fact that he did not originally file the same. There is no basis for the construction that Article 7332 applies only to suits which were originally filed by the county or district attorney. It is to be remembered that Article 7333 allows these attorneys fees as set up in Article 7332 to be charged as court costs.

In 1937 the Legislature passed Article 7345b. Among other things this Act provides for the impleading or intervening of other tax units in a suit originally filed by one tax unit. Section 6 of this Article deals with court costs and reads as follows:

"Sec. 6. All court costs, including costs of serving process, in any suit hereafter brought by or in behalf of any taxing units for delinquent taxes in which suits all other taxing units having a delinquent tax claim against such property of any part thereof, have been impleaded, together with all expenses of foreclosure sale and such reasonable attorney's fees as may be incurred by the interpleaded or intervening taxing units,

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not exceeding ten per cent (10%) of the amount sued for, such attorney's fees to be subject to the approval of the court together with such reasonable expenses as the taxing units may incur in procuring data and information as to the name, identity and location of necessary parties and in procuring necessary legal descriptions of the property, shall be chargeable as court costs."

Section 13 of this same Article reads as follows:

"Sec. 13. The provisions of this Act shall be cumulative of and in addition to all other rights and remedies to which any taxing unit may be entitled, but as to any proceeding brought under this Act, if any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern as to such proceeding. The provisions of Chapter 10, Title 122 of the Revised Civil Statutes of 1925 shall govern suits brought under this Act except as herein provided. Acts 1937, 45th Leg., p. 1494-a, ch. 506."

Section 13 specifically provides that the provisions of Chapter 10 shall control in all cases except in cases where the provisions of this Act are in conflict thereto. In those cases this Act shall control. Furthermore, Article 7345b is cumulative of all other laws on the subject.

The question presented then is whether or not Sec. 6 of Article 7345b is in conflict with Article 7332 as to attorneys fees which may be collected by a county or district attorney.

Section 6 of Article 7345b deals with what may be allowed as court costs. Nowhere in this Section does it provide that taxing units shall pay an attorney's fee of ten per cent. Furthermore, nowhere in this Section is it provided that ten per cent may be charged in every case as court costs for attorney's fees. It is provided, however, that "such reasonable fees as may be incurred by the interpleaded or intervening taxing units and not exceeding ten per cent of the amount sued for" may be charged. In other words, if a taxing

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unit contracted with an attorney to pay him five per cent for his services, then only this five per cent would be chargeable as court costs because that would be the reasonable attorney's fees that would be incurred by that particular interpleaded or intervening taxing unit. However, if that same taxing district contracted with an attorney to pay him fifteen per cent as his attorney's fees only 10 per cent of that amount would be chargeable as court costs. To bear this out is the fact that the act does not provide for ten per cent attorney's fees in every case but provides for the allowance of attorney's fees as incurred "not exceeding ten per cent."

While Section 6 of Article 7345b applies to all taxing units it is evident that the part which refers to attorney's fees as court costs does not apply to the county or district attorney. This is true because this Section reads, in part, as follows:

"Such reasonable attorney's fees as may be incurred by the interpleaded or intervening taxing units . . ."

The particular language quoted shows the legislative intention that the same shall not apply to county attorney's fees because of the fact that the State and counties are prohibited by Article 7333, supra, from incurring any attorney's fee. The fee of the county or district attorney is set by Article 7332 and in no case may the State or county be liable for the same under Article 7333 which Article also requires that said fee be charged as court costs. It is the opinion of this Department, then, that the county or district attorney should receive the fee set out in Article 7332 in every tax suit where judgment is obtained and the same is always chargeable as court costs.

It is to be remembered, however, that the rest of Section 6 of Article 7345b, aside from the portion concerning attorney's fees, does apply to the State and county so as to allow them to set up as costs the items set out in said Sec.6.

In your letter you inquire further if the county attorney should collect these fees allowed him by statute where he is compensated from the officers salary fund.

Article 7332 before it was amended provided, in part, as follows:

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"All fees provided for the officers herein mentioned shall be in addition to fees allowed by law to such officers, and shall not be accounted for by said officers as 'fees of office'".

Article 7332 as amended in 1931 provides in part:

"All fees provided for the officers herein shall be treated as fees of office and accounted for as such and said officers shall not receive nor retain said fees in excess of the maximum compensation allowed said officers under the laws of this state."

Article 3912e, Section 5, provides in part:

"It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officer's Salary Fund, or funds provided in this Act."

You are correct in your conclusion that where a county attorney, who is compensated from the officer's salary fund, intervenes in a tax suit for the state and county he should collect said attorney's fees as court costs and then deposit them in the officer's salary fund and the same should not be retained by him in addition to his regular compensation.

If the attorney's fees actually collected in your case are in excess of the amount the county is entitled to charge the taxpayer as costs, the correct disposition of such excess funds would be as you suggested in your letter to have the district clerk make a refund of such fees to the taxing units or whatever party may be entitled to the same.

Anything in Opinion No. O-836 which may be in conflict with this opinion is hereby expressly overruled.

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Billy Goldberg
Billy Goldberg
Assistant

BC APPROVED OCT 4, 1939

B. Miller
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY *PLWB*