



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable O. Kennedy
County Attorney
Bee County
Beeville, Texas

Dear Sir:

Opinion No. O-2519

Re: Employment of foreign
county attorney by Com-
missioners' Court for
delinquent tax collec-
tion.

This will acknowledge receipt of your letter of August 8, 1940, requesting the opinion of this department upon the following question:

"Can the Commissioners' Court of this county award a contract for collection of delinquent taxes, on a percentage basis, to an attorney who is serving as county attorney in another county?"

Article 7335, Vernon's Annotated Civil Statutes, reads as follows:

"Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such lands, but all such payment and expenses shall be contingent upon the collection of such taxes,

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penalty and interest. It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys."

Under Article 7535, it lies within the discretion of the Commissioners' Court to employ any competent attorney to collect delinquent State and county taxes. A fortiore the court may employ an attorney who by coincidence is county attorney in another county, unless his employment is precluded by another statute.

Article 336, Vernon's Annotated Civil Statutes, reads as follows:

"No district or county attorney shall take any fee, article of value, compensation, reward or gift or any promise thereof, from any person whomsoever, to prosecute any case which he is required by law to prosecute, or consideration of or as a testimonial for his services in any case which he is required by law to prosecute, either before or after such case has been tried and finally determined."

In Lattimore vs. Tarrant County (C. C. A. 1909), 124 S. W. 205, a question was raised under the above quoted Article as to the employment of the county attorney by the Commissioners' Court of his own county for representation in matters not involving his official duties and the court said:

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*** the commissioners' court may lawfully employ the county attorney to represent the interest of their county in any cause where such duty is not enjoined upon him by law. Browning v. Tarrant County, 11 S. W. 748. In other words, article 299, Sayles' Ann. Civ. St. 1897, which makes it unlawful for a county attorney to accept any fee, article of value, compensation, reward or gift, for the prosecution of any case, or for services in any case, applies only to cases which he 'is required by law to prosecute.'

It is clear beyond question that the county attorney of one county has no official duty to represent another county in delinquent tax matters. It is therefore the opinion of this department and you are respectfully advised that his employment by the other county being in no way antagonistic to his duties toward his own county as its attorney, the Commissioners' Court of the foreign county may employ such county attorney to represent the foreign county in delinquent tax matters under Article 7335 of Vernon's Annotated Civil Statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 15 1940

W. Brown
FIRST ASSISTANT
ATTORNEY GENERAL

By *James D. Smullen*
James D. Smullen
Assistant

JDS:RS

