



This Opinion  
Overrules Opinion  
# 0-2927

693

0-3362

OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Luther C. Johnston  
County Attorney  
Anderson County  
Palestine, Texas

Dear Sir: Opinion No. 0-3362  
Re: Citation by publication in  
delinquent tax suits.

In your letter dated March 27, 1941, you request  
our opinion on the following question:

"Should citation by publication in delinquent  
tax suits be published for two consecutive weeks  
in compliance with Sec. 5 (d) of Article 7345b  
R. C. S., or should it be published for three con-  
secutive weeks as provided in Article 7342 R. C. S.?"

Article 7342, Revised Statutes, (Acts 1897, p. 158;  
G. L. Vol. 10, p. 1192) reads, in part, as follows:

"Whenever the owner or owners of any lands  
or lots that have been or may be returned delin-  
quent or reported sold to the State for the taxes  
due thereon for any year or number of years, are  
non-residents of the State, or the name of the  
owner or owners of said lands or lots be unknown,  
then, upon affidavit of the attorney for the State  
setting out that the owner or owners are unknown  
to the attorney for the State and after inquiry  
cannot be ascertained, said parties shall be cited  
and made parties defendant by notice in the name  
of the State and county, . . . which notice shall  
be signed by the clerk and shall be published in  
some newspaper published in said county one time  
a week for three consecutive weeks. . . .  
(Underscoring ours).

We quote from Article 7345b, Vernon's Annotated  
Civil Statutes (Acts 1937, 45th Leg., p. 1494-a, Ch. 506),  
as follows:

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"Sec. 3. The laws governing ordinary foreclosure suits in the District Courts of this State shall control the question of parties, issuance, and service of process and other proceedings in tax suits, save and except as herein otherwise provided. The following special provisions shall apply to and govern the question of parties and issuance and service of process in tax suits:

". . . .

"(d) Where any defendant in such suit is a nonresident of the State, where the names of the owner or owners of said property are unknown to the attorney filing the suit for the plaintiff taxing unit, where the residence of any defendant is unknown to such attorney, and where the names of the defendant heirs of any deceased person are unknown to such attorney, and such facts are recited in the petition, service of notice by publication is hereby authorized in each and all of such cases, . . . Such notices shall be published in some newspaper published in the county in which the property is located one time a week for two (2) consecutive weeks, the first publication to be not less than fourteen (14) days prior to the first day of the term of Court to which returnable; . . . When notice is given as herein provided it shall be sufficient, and no other form of citation or notice shall be necessary on such defendants.

". . . .

"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." (Underscoring ours).

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In the case of State et al. v. Bagby's Estate et al., 126 S.W. (2d) 687, the following language is found:

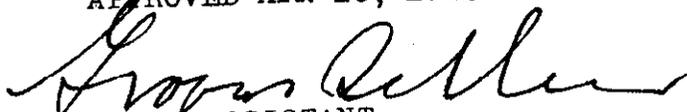
"The provisions of Chapter 10, Title 122 (taxation of R.C.S. where applicable will control the procedure questions in tax foreclosure suits here presented. 40 T. J. p. 241; Young v. Jackson, 50 Tex. Civ. App. 351, 110 S.W. 74, writ refused; Rousset v. Settegast, Tex. Civ. App., 210 S.W. 219; Article 7342, R.C.S. of 1925, under this Title provides that 'whenever \* \* \* the name of the owner or owners of said \* \* \* lots be unknown, then, upon affidavit of the attorney for the State setting out that the \* \* \* owners are unknown to the attorney for the State and after inquiry cannot be ascertained, said parties shall be cited and made parties defendant by notice \* \* \*.' This article then prescribes the form of such notice and provides for publication once each week for three consecutive weeks. The last expression of the Legislature governing the procedure to be followed in suits on delinquent taxes and to enforce tax liens was enacted in 1937, designated as Article 7345b, Vernon's Annotated Statutes of Texas. This act also provides for the issuance and service by publication of notice in suits against unknown owners. . . . (Underscoring ours).

It is clear from the authorities cited above that the provisions of Article 7345b, supra, will prevail over the provisions of Article 7342, supra, should they be in conflict. You are therefore advised that service of notice by publication shall be sufficient if same be published for two (2) consecutive weeks in compliance with Section 3(d) of Article 7345b, supra, when said Article is applicable.

Any language contained in our Opinion No. O-2927 that is contrary to what we have said in this opinion is hereby expressly overruled.

Yours very truly

APPROVED APR 16, 1941

  
FIRST ASSISTANT  
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By 

Lee Shoptaw  
Assistant

LS:mp

