8

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ben K. Davidson
County Attorney
Levelland, Texas

Dear Sir:

Opinion No. O-3579
Re: Commissions of delinquent tax attorney in view of House Bill No. 76, 47th Legislature.

On January 13, 1941, the Commissioners' Court of Hockley County entered into a contract on the form adopted by the office of the State Comptroller with Edgar E. Payne, as attorney, for the collection of delinquent taxes during a period beginning with the date of the contract and ending on December 31, 1942. Paragraph 5 of said contract reads as follows:

"First Party agrees to pay to Second Party as compensation for the services hereunder required 7½ per cent (not to exceed fifteen (15) per cent) of the amount collected of all delinquent taxes, penalty and interest of the years covered hereby, actually collected and paid to the collector of taxes during the term of this contract, of which Second Party is instrumental in collecting as evidenced by copies of communications, tax notices or abstracts filed with the tax collector prior to the payment of such tax, including collection of taxes on property not appearing on the assessment rolls nor shown delinquent but which would have been so shown had it been properly assessed, discovered by said Second Party, as and when collected, following the end of each month within the period of this contract, accordingly as the collector makes up his monthly reports; provided, cost of collecting delinquent taxes shall not exceed the amount of penalty and interest, or an amount

COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

equal to such penalty and interest of all delinquent taxes collected under the terms of this contract (Chapter 229, Sec. 1, Regular Session Forty-second Legislature, having reference to the regular 5% penalty and 6% interest). The percent of compensation here referred to shall be contingent upon the collection of such taxes as by act of the Legislature are required to be collected. Should any remission of penalty and interest on taxes appearing on the delinquent records be made by legislative enactment effective during the period of this contract, the same shall not be collected nor commission allowed thereon. Also, ad valorem taxes, delinquent, levied against State owned property for county and district purposes, the payment of which is to be taken care of by legislative appropriation provided for by Statute, are excluded from the provisions of this contract."

In your letter of May 19, 1941, you request our opinion in substance as to what commission or compensation Mr. Payne may now be paid upon his collecting delinquent taxes under authority of the contract, in view of the recent enactment of House Bill No. 76, Forty-seventh Legislature.

Sections 1 and 3, of House Bill No. 76, read as follows:

"Section 1. That all interest and penalties that have accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1940, due the State, any county, common school district, road district, levee improvement district, water improvement district, and water control and improvement district, irrigation district, and other defined subdivisions of the State (and, subject to the provisions hereinbefore and hereinafter contained, such interest and penalties on delinquent ad valorem and poll taxes due cities, towns and villages, and special school districts, and independent school districts,) shall be and the same are hereby released, provided said ad valorem and poll taxes

are paid on or before November 1, 1941. It is provided that the provisions hereof shall not apply to cities, towns, and villages, and special school districts, and independent school districts, unless and until the governing body of any such city, town, or village, or special school district, or independent school district finds that unusual or excessive default in the payment of ad valorem and poll taxes has occurred, and that an extension of time for the payment of such delinquent ad valorem and poll taxes will promote and accelerate the collection thereof, whereupon such governing body shall adopt a resolution or ordinance evidencing such finding, and upon the recording of such findings of fact the provisions of this Act shall be in full force and effect as to any such city, town, or village, or special school district, or independent school district. It is hereby expressly and specifically provided that penalties and interest herein released are released only on delinquent ad valorem and poll taxes and on no other taxes. * * *

"Sec. 3. Anyone desiring to pay at one time all the delinquent taxes for only one year wherein such taxes are delinquent for more than one year shall have the right to pay the same but without remission of penalties and interest; provided, however, that any person availing themselves of the benefits of this Act shall be required to pay all delinquent ad valorem taxes due the State and county on any specific piece of property on which such taxes are delinquent before the penalties and interest may be released as herein provided; conditioned that a six per cent (6%) penalty on the total amount delinquent be paid on such property. * * * "

To us the proviso in the contract "cost of collecting delinquent taxes shall not exceed the amount of penalty and interest, or an amount equal to such penalty and interest

of all delinquent taxes collected under the terms of this contract" was meant only to guard against the use of tax money itself to pay the costs of collection, but to make the penalty and interest collected under the contract as an over-all proposition subject to such expenses. In other words, it was meant to provide that the attorney's compensation under the contract and any other costs of collection incurred, if any, should not exceed the total amount of penalties and interest collected by him during the time of and under the contract. Applying this to the contract in question it is our opinion that Mr. Payne may be paid the full 7½ per cent commission stipulated in the contract, so long as such per cent, plus any other costs of collection incurred, if any, do not exceed an amount equal to the penalties and interest collected under the contract from its beginning.

We have read the case of Slimp vs. Wise County, 96 S. W. (2d) 537, but do not believe it applicable to the contract forms now in use.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUN 4, 1941

Grover Sellers

FIRST ASSISTANT
ATTORNEY GENERAL

By Glenn R. Lewis

Glenn R. Lewis
Assistant

GRL:ej

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN