



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Thomas A. Wheat  
County Attorney  
Liberty, Texas

Dear Sir:

Opinion No. 0-3715  
Re: Interpretation of delinquent  
tax contract in view of House  
Bill No. 78, 47th Legislature.

On January 20, 1941, the Commissioners' Court of Liberty County entered into a contract on the form adopted by the office of the State Comptroller with H. A. Maynard, an Attorney, for the collection of delinquent taxes during a period beginning with the date of the contract and ending on December 31, 1942. Paragraph eight of said contract reads as follows:

"First Party agrees to pay to Second Party as compensation for the services hereunder required 10 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 equal to

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such penalty and interest of all delinquent taxes collected under the terms of this contract (Chapter 229, Sec. 2, Regular Session Forty-second Legislature, having reference to the regular 8% penalty and 6% interest). The per cent 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 June 10, 1941, you request our opinion in response to the following question:

"Are all of the commissions payable to H. A. Maynard delinquent tax contract under his contract with the State and County limited to the 6% provision of H. B. #76, or is he entitled to full contractual commission on those accounts where abstracts, tax notices or communications have been mailed, and notice thereof filed with the tax collector in view of the last sentence in Section No. 2 of said Bill?"

Sections 1, 2 and 3 of House Bill No. 76, 47th Legislature, 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, and 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

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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. 2. That all costs of every kind and character that have accrued or attached or that may hereafter accrue or attach to or by reason of delinquent poll or ad valorem taxes on which said poll or ad valorem tax the interest and penalties have been released by any of the provisions of this Act shall be and the same are hereby released, and no such costs shall hereafter be charged, collected, or accounted for, provided, however, that any costs that are now due and payable to any officer or official shall remain a valid obligation, notwithstanding the provisions hereof.

"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 persons 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."

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In our opinion No. 0-3579 we had a similar contract under construction, the question there under consideration being the amount of commission or compensation payable to the contracting attorney, in view of said House Bill No. 75. We therein said:

"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."

As shown above, it is our opinion that the express terms of the contract limit the sums which are to be paid the collecting attorney to an amount equal to the penalties and interest collected under the terms of the contract. No distinction is made between payments made to him as compensation for service and those which would serve to reimburse him for expenditures of money made by him in pursuance of the terms of the contract. No question of vested rights is involved, since the attorney agreed that he should never have any right to moneys in excess of the amount of penalties and interest which he should collect.

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The quoted provision from the contract has been in the form promulgated by the office of the Comptroller since early in 1937. Its inclusion was not wholly arbitrary and without reason. Penalties and interest may be remitted by simple legislative action, while the tax itself may not be remitted except in extreme instances by a two-thirds vote of both houses. Article 8, Section 10, State Constitution. Such remissions of penalty and interest are intended and reasonably calculated in themselves to induce the taxpayer to come in and pay his delinquent taxes. This provision in the contract was evidently meant to claim for the State and County, and other political subdivisions, the benefits resulting from this inducement and to remove from any controversy the question as to whether the collection was actually brought about by the attorney and was one for which he ought to receive compensation. But, whether one may regard the reasons back of such provision in the contract as good or not, the important thing is that such is in the contract.

In view of the written agreement of the parties we have not found it necessary to consider the question as to whether the statute (Art. 7264A, Sec. 2, V.A.C.S.) would permit of a contract for the payment of sums exceeding the amount of penalties and interest collected.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUL 22, 1941

*Sam H. Davidson*

FIRST ASSISTANT  
ATTORNEY GENERAL

By *Glenn R. Lewis*

Glenn R. Lewis  
Assistant

GRL:AMH

