



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Marvin H. Brown, Jr.
Criminal District Attorney
Fort Worth, Texas

Dear Sir:

Opinion No. 0-2948
Re: Have the new Supreme Court
rules superseded the citation
form to be used in suits for the
collection of delinquent taxes?

On September 10, 1941, you requested the opinion
of this department on the question set out in your letter
as follows:

"Our office is confronted with the problem
of construing the new Rules of Procedure adopted
by the Supreme Court, effective September 1st,
1941.

"Section 5, Article 7328(1) provides a
specific form of citation in suits for delin-
quent taxes. Rules 101 to 107 now in force re-
late to citations to be issued in Civil cases.

"This office is of the opinion that the new
rules have not superseded the form to be used in
suits for the collection of delinquent taxes,
which form of citation is specifically set forth
in Article 7328 (1) Section 5.

"Please assist us in this matter with an ex-
pression of your views."

Upon receipt of your letter the writer wrote you
as follows:

"It is our understanding that the point you
inquire about has been called to the attention of
the Supreme Court and that the court is now pre-
paring an amended rule to take care of this seeming

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inconsistency. With your permission, therefore, we will wait the action by the court which we understand will be in the near future before answering your request."

We now call your attention to Rule No. 2 as amended by the Supreme Court; the same provides as follows:

"These rules shall govern the procedure in the justice, county, district and appellate courts of the State of Texas in all actions of a civil nature, with such exceptions as may be hereinafter stated. Where any statute in effect immediately prior to September 1, 1941, prescribed a rule of procedure in lunacy, guardianship, or estates of decedents, or any other probate proceedings in the county court differing from these rules, such statute shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in bond or recognizance forfeitures in criminal cases are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply. All statutes in effect immediately prior to September 1, 1941, prescribing rules of procedure in tax suits are hereby continued in effect as rules of procedure governing such cases, but where such statutes prescribed no rules of procedure in such cases, these rules shall apply." (underlining ours).

Section 5, of Article 7328-1 contains a form of citation to be used in tax suits.

It is the opinion of this department that Article 7328-1 is still in force and effect and said statute has not been repealed or amended by the new rules of practice and procedure in civil actions promulgated by the Supreme Court of this State.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Billy Goldberg
Assistant

OPINION
COMMITTEE

BY B. C. W.
CHAIRMAN

RG: oah