OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ben J. Dean
District Attorney
Stevens County
Breckenridge, Texas

Opinion No. O-3997
Re: Can taxpayers who have made partial payments on their delinquent taxes under the authority of Article 7345c of Vernon's Revised Civil Statutes tender the balance due on the taxes without the payment of penalty and interest?

Dear Sir:

We are in receipt of your letter of September 10, 1941, in which you request the opinion of this department on the question set out therein as follows:

"Under the provisions of Article 7345c, Revised Statutes, a taxpayer was permitted to pay delinquent taxes in installments as therein provided.

"Subsequent to July 1, 1937, various taxpayers in Stephens County paid installments on delinquent taxes. The tax collector who received such payments resigned on April 25, 1940, and was indicted for mis-appropriation of public moneys, including these delinquent taxes. The manner in which the taxes were paid was held valid in a criminal case growing out of such transaction, and which was appealed. Howell v. State, 146 S. W. (2nd) 747.

"The bondsman of the State has paid into the State the amount of such partial payment of such delinquent taxes so converted by said official as was allocated to the State. The County has in a suit against the tax collector and his bondsman recovered judgment for the county's part of such delinquent taxes.

"Under the provision of 73361, Revised Statutes, the interest and penalties on all ad valorem taxes that were delinquent on or before July 1, 1940, are remitted if the taxes are paid in full on or before November 1, 1941.

"Can these taxpayers who have made these partial payments on their delinquent taxes now come in and tender the balance due on the taxes without the payment of penalty and interest? In other words, do they occupy the same status as if no partial payment had been made, or would they be required to pay penalty and interest?"

House Bill 76, Acts of the 47th Legislature, 1941, has been codified in Vernon's as Article 73361 and provides in part as follows:

"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 spe-

cial school districts, and independent 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 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.

"* * *"

This department construed the above quoted sections of said House Bill 76 in opinion No. O-3657 and held as follows:

"Our opinion is that under the Act no penalty on delinquent taxes will be chargeable by the State and County, or by other political subdivisions