



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable C. Woodrow Laughlin
County Attorney
Jim Wells County
Alice, Texas

Dear Sir:

Opinion No. 0-4245
Re: Rules of procedure in tax
suits.

We acknowledge receipt of your request for an opinion on the following questions:

"1. If citations should be issued and served upon a resident defendant in a tax suit on behalf of an independent school district, would it be valid service if such citations were drawn according to the form prescribed by the new rules of Civil Procedure, being Rule No. 101?

"2. Senate Bill No. 206 found in Chapter 19, page 666 of the regular session of the 46th Legislature prescribed form governing over Section 3 (B) of Art. 7345B, R. C. S., Art. 2022, R. C. S., and Rule No. 101 of the new rules of Civil Procedure?"

House Bill 108, 46th Legislature, authorized the Supreme Court of Texas to make rules on practice and procedure in all civil judicial proceedings. The enactment also provided that:

"Sec. 3. At the time it files the rules, the Supreme Court shall file with the Secretary of State a list of all articles or sections of the General Laws of the State of Texas, and parts of articles and sections of such General Laws, which, in its judgment, are repealed by Section of this Act. Such list giving the construction of the Supreme Court as to the General Laws and parts of laws repealed by Section 1 shall constitute, and have the same weight and effect, as any other decision of the Supreme Court."

Honorable C. Woodrow Laughlin, page 2

By Senate Bill 206, the 46th Legislature passed what is known as Article 7328.1, Vernon's Revised Civil Statutes, and Section 5 thereof provides a form for citations in tax suits.

The Supreme Court of Texas complied with Section 3 of House Bill 108, supra, and filed with the Secretary of State a list of all articles and sections of the General Laws which were in its judgment repealed by the Rules of Practice and Procedure in Civil Actions. An examination of the list does not disclose that Article 7328.1, was considered by the Supreme Court as being repealed. The list was filed by the Supreme Court on October 29, 1940, and Article 7328.1, was a part of the General Laws at that time. We are therefore of the opinion that Rule No. 101 of the Rules of Practice and Procedure in Civil Actions does not replace Article 7328.1,

You are therefore advised that in our opinion a citation in a tax suit is not sufficient unless it is substantially in the form prescribed by said Article 7328.1.

In answer to your second question you are advised that Article 7328.1 has not been repealed for the reasons above stated, and that the form prescribed therein is the proper form for use in tax suits.

Your attention is called to the fact that the Supreme Court has amended Rule No. 2 of the Rules of Practice and Procedure in Civil Actions, effective December 31, 1941, expressly continuing the rules governing procedure in Tax suits which were effective immediately prior to September 1, 1941.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Richard H. Cocke
Richard H. Cocke
Assistant

APPROVED DEC 20, 1947

C. Woodrow Laughlin
C. W. LAUGHLIN
ATTORNEY GENERAL

RHC:db

