O-4777

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable K. D. Hall
County Attorney
Refugio County
Refugio, Texas

Dear Sir:

Opinion No. O-4777
Re: Whether personal property taxes and real estate taxes can be separated for the same year and real estate taxes paid without payment of personal property taxes.

In your letter of August 14, 1942, you request our opinion upon the following:

"It seems that various individuals in the County owe for past years, taxes on personal property as well as real estate which was assessed against such individuals for the same year, when they had in their possession considerable personal property along with the real estate.

"Now it seems that they do not have the personal property on hand but still have the real estate and want to pay taxes on the real estate and not on the personal property.

"Due to information received from the Comptroller, the Tax Assessor and Collector is inclined to think he cannot separate the taxes, that is, allow the individual to pay taxes on real estate and ignore the taxes on the personal property for the same year, and I would, therefore, like to know if that can be done.

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> In some instances it seems that the real estate involves the homestead and in some instances it does not."

It is now well established that the lien provided by Section 15 of Article VIII of the Constitution and Article 7172, Revised Civil Statutes, attaches only to each separate tract or parcel of land for the taxes assessed against it. Ritchey v. Moor, 249 S. W. 172, Supreme Court; Davis v. West, 5 S. W. (2d) 870; State v. Hunt, 207 S. W. 636; State Mortgage Corporation v. Ludwig, 35 S. W. (2d) 267, (reversed on other grounds), 48 S. W. (2d) 950.

A homestead is liable for taxes which are lawfully assessed upon it. City of San Antonio v. Toepperwein, 133 S. W. 416, (Supreme Court). In addition to Article VIII, Section 15, of our Constitution, Section 50 of Article XVI, of our Constitution, and Article 7279, Revised Civil Statutes, further protects the homestead against sale for taxes other than the taxes due upon such homestead.

In the case of State v. Hunt, 207 S. W. 636, the court held:

> "But we agree with the trial court that the state did not have a lien on the land to secure the payment of either the poll taxes assessed against the Williamses or the taxes assessed against them on account of their ownership of personal property. The general rule is that taxes are never a lien on property unless expressly made so. 2 Cooley, Tax'n, p. 865. The lien created by section 15 of article 8 of the Constitution upon 'landed property' is only for taxes assessed against such property; and so of the lien upon real property provided for by Article 7528, Vernon's Statutes."

In the case of Hoffmann v. Wood, 258 S. W. 835, the court held, after quoting from Article 7697a, (now Article 7324):

> "This provision of the statute is clear and unequivocal in its direction to the tax

collector to accept the offered payment of the taxes, interest, penalties, and costs due and unpaid upon any lot, tract, or parcel of land as shown by the delinquent tax records of the county, at any time before suit is filed therefor, and to issue his receipt therefor."

In the case of Richey v. Moor, 249 S. W. 172, the Supreme Court said:

". . . If we say that the taxpayer cannot pay the taxes assessed against his tracts of land in severalty, and that he must pay the taxes on all the tracts before a statutory receipt may issue, and the lien on any one of them may be discharged, then, manifestly, for all practical purposes, we have declared a lien on all his tracts for the respective taxes due on each. In other words, we have in the practical application of the statutes imposed a lien where the Constitution has not done so. . . .

". . . .

". . . Under the constitutional provision before us, the right of the citizen to have any tract of his land free of any lien except to secure the taxes levied against it, is an important, substantial, and real property right, not limited by the Constitution by any obligation to pay all other taxes due by him. If we were to say that the taxpayer cannot pay the taxes on one tract of his land without paying on all, or paying all of his taxes, in its final effect on him, as previously stated, we would be awarding a lien not provided by the Constitution, or imposing a quasi-distraint not warranted by that instrument. The general rule that all taxes due must be paid at one time is not to be so blindly followed as to subvert the plain meaning of the organic law.

". . . We are of the opinion that the tax against each separate tract or parcel of land,

in so far as the right of payment is concerned, is to be regarded as a separate tax, and may be paid without at the same time paying other taxes. Since the right of payment exists, the statutory receipt should issue correctly describing the property and the tax, limiting the effect, of course, to the property actually involved and the tax actually paid."

We are of the opinion that the tax collector cannot refuse to accept tendered payment of taxes assessed against real estate, whether homestead or not, although the taxpayer may owe taxes assessed for the same year on personal property, for this would be tantamount to creating a lien upon real estate for the collection of personal property taxes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Thos. B. Duggan, Jr.
Thos. B. Duggan, Jr.
Assistant

TDD:db

APPROVED SEP 12, 1942
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY BWB