



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

0-5197
GERALD C. MANN
ATTORNEY GENERAL

Honorable Ben J. Dean
District Attorney
90th Judicial District
Breckenridge, Texas

Dear Sir:

0-5197
Opinion No. 0-5197

Re: When an assessment has been set aside by order of the district court and the property stands for reassessment, is the value placed thereon by the assessor-collector conclusive or should it be carried before the Commissioners' Court for equalization?

And related questions.

We have received and duly considered your letter of April 12, 1943, in which you request the opinion of this Department as to the procedure to be followed in the assessment of property for taxes where former assessments have been declared invalid and set aside by the district court.

We quote your questions as follows:

(a) When the assessment has been set aside by order of the district court and the property stands for re-assessment, is the value placed thereon by the assessor-collector conclusive or should it be carried before the Commissioners' Court for equalization? In other words, does the assessor-collector have power, regardless of the wishes of the Commissioners' Court, to set the valuation on the property and collect the taxes on the valuation set by him?

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"(b) If it is necessary for the Commissioners' Court to pass on the assessment, can the Commissioners' Court pass on the assessment at any time, or is it required to pass on such assessment only when it is convened as a board of equalization at the regular time set by statute?"

In the event an assessment has been set aside by the district court, the re-assessment must proceed in accordance with Article 7346 et seq. *Electra Independent School Dist. v. W. T. Waggoner Estate*, _____ Tex. _____, 168 S. W. (2d) 645; *French Independent School Dist. of Jefferson County v. Howth*, 134 Tex. 222, 134 S. W. (2d) 1036; *Ceyanes v. Tabasco Consol. Independent School Dist.*, 94 S. W. (2d) 537, writ of error refused.

We now quote the applicable statutes:

"Article 7346. Whenever any commissioners court shall discover through notice from the tax collector or otherwise that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid and should be canceled and re-assessed, or to have been declared invalid and thereby canceled by any district court in a suit to enforce the collection of taxes. No re-assessment of any property shall be held against any innocent purchaser of the same if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments. Acts 1905, p. 318.

"Article 7347. When said list has been so made up the commissioners court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled

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by any former order of the commissioners court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the Comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary as required under Article 7207, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector given during his term of office that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this law for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to. Id."

The above statutes are clear and unequivocal with the possible exception as to the time when the Commissioners' Court should meet as a board of equalization. Article 7206 sets the time as the second Monday in May or as soon thereafter as practicable before the first day of June, whereas Article 7346 et seq allows it to meet at any time for the purposes set out therein.

The statutes contained in Chapter 11, Title 122, R. C. S. 1925 (Article 7346 et seq) are applicable only "in certain cases" and when applicable they must govern. *Ceyanes v. Tabasco Consol. Independent School Dist.*, supra. Therefore,

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in our opinion the Commissioners' Court may pass on the re-assessment at any time and is not required to wait until the regular time set by Article 7206.

We trust that the above sufficiently answers the questions asked.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Woodrow Edwards*

Woodrow Edwards
Assistant

WE: pm

APPROVED MAY 22, 1943

Genes E. Mann

ATTORNEY GENERAL OF TEXAS

