



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable G. S. Arnold  
County Attorney, Coke County  
Robert Lee, Texas

Dear Sir:

Opinion No. O-5641  
Re: Procedure in delinquent  
tax suits.

Your letter of September 23, 1945, requesting the opinion of this department on the question stated therein reads as follows:

"I would like to have your opinion with reference to issuance and service of Citations and return of officer executing same, governing in suits for delinquent taxes.

"In view of Rule 2 Rules of Practice and Procedure in Civil Actions, it would seem that no change was made in the procedure governing the issuance of Citations, service and returns in such cases, however in view of Rule 101, 106 and 107, it appears that all Citations served, should be accompanied by a copy of plaintiff's Petition.

"What I want your opinion on, is whether or not such Citations in suits for delinquent taxes, when directed to a defendant residing in the County where such suit is filed, should be accompanied by a copy of plaintiff's petition to be delivered to the defendant with a true copy of the Citation."

Rules 2, 101, 106 and 107 of the Texas Rules of Civil Procedure are as follows:

"These rules shall govern the procedure in the justice, county, district and appellate

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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."

"Rule 101. The citation shall be styled 'The State of Texas' and shall be directed to the defendant and shall command him to appear and answer the plaintiff's petition at or before 10 o'clock a.m. of the Monday next after the expiration of 20 days from the date of service thereof, stating the place of holding the court. It shall state the date of the filing of the petition, its file number and style of the case, and the date of issuance of the citation be signed and sealed by the clerk, and shall be accompanied by a copy of plaintiff's petition. The citation shall further direct that if it be not served within 90 days after date of its issuance, it shall be returned unserved. The party filing any pleading upon which citation is to be had shall furnish the clerk with a sufficient number of copies thereof for use in serving the parties to be served, and when the copies are so furnished the clerk shall make no charge therefor."

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"Rule 106.

"Unless it otherwise directs, the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto.

"Rule 107. The return of the officer executing the citation shall be indorsed on or attached to the same; it shall state when the citation was served and the manner of service, and shall certify that a true copy of the citation with the accompanying copy of the petition was delivered to the defendant, and be signed by him officially. When the citation has not been served, the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain. No default judgment shall be granted in any cause until the citation, with the officer's return thereon, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment."

Article 7328-1, Vernon's Annotated Civil Statutes, is a specific statute relating to forms and certain procedure in delinquent tax suits. This department held in Opinion No. 0-3948 "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."

In order to answer your question it is necessary to consider Articles 7328-1 and 7345b, of Vernon's Annotated Civil Statutes of Texas, and the effect of the Texas Rules of Civil procedure upon these statutes.

Heretofore this department has rendered an opinion (No. 0-4245a) discussing at length the form of citations in delinquent tax suits, the returns of such citations, etc. In that Opinion (No. 0-4245a) a copy of which is enclosed herewith, it is stated among other things:

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" . . ."since there were two specific statutes (article 7328-1, Section 5 and Article 7345-b Section 3, supra governing citations in tax suits in force and effect immediately prior to September 1, 1941, the original date when the Texas Rules of Civil Procedure became effective, we think that it is doubtful that the Texas Rules of Civil procedure are applicable generally to citations in tax suits. . . ."

However said opinion does not specifically pass on the questions presented by you. The appellate courts of this State, insofar as we have been able to determine, have not passed upon the question under consideration. After carefully considering the foregoing statutes and the Texas Rules of Civil Procedure we doubt that it is necessary for citations to be accompanied by a copy of plaintiff's petition when such citations are directed to defendants residing in the county where such suits are filed. However, until our courts have decided the question it is our opinion, that as a matter of precaution the citations should be accompanied by a copy of plaintiff's petition when such citations are directed to defendants residing in the county where the suits are filed.

Very truly yours

APPROVED OCT 18, 1943

ATTORNEY GENERAL OF TEXAS

*George S. Arnold*  
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ATTORNEY GENERAL

By

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AW:ncd

