



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. G. Earl Hutchings
County Auditor
Young County
Graham, Texas

Dear Sir:

Opinion No. O-5872

Re: Authority of district clerk
to enter on his records a
dismissal of delinquent tax
suit and to charge fee there-
for.

We acknowledge receipt of your letter of February 14, 1944, requesting the opinion of this department on the questions stated therein. We quote from your letter as follows:

"Please advise on the following question. About ten years ago there were filed in this county several suits to collect delinquent taxes. These suits were just filed and no actions were had. Since this the taxes were paid to the Tax Collector and the suits were not dismissed at the time the taxes were paid. Now very often titles have been examined and found that these suits have not been dismissed. Is the district clerk supposed to enter this dismissal on his records and make a charge of \$1.25 for this service? Please let me hear from you at your very earliest."

Your letter, as we view it, presents to us two questions: First, has the district clerk authority to enter a dismissal on his records under the circumstances outlined; and second, if the district clerk does have such authority and does enter the dismissal in such a case, is he entitled to a fee of \$1.25 for his services in doing so.

The powers and duties of a district clerk are outlined by statute, and the authority of such official is only to perform such duties as are enjoined by statute or imposed by the lawful authority of the court. 9 Tex. Jur., p. 245, Sec. 15.

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The district clerk has no authority to dismiss any pending cause on his own order, and this officer's authority in regard to the dismissal of causes pending in the district court of his county extends only to performing the ministerial function of entering on his records the dismissal of such cause upon an order of dismissal by the court or upon the order or request for dismissal made in vacation by the plaintiff in a cause wherein the defendant has not answered. Texas Rules of Civil Procedure, Rule 162.

In view of the above, we respectfully answer your first question in the negative. Since we do so answer your first question, we feel that your second question becomes moot. However, for your convenience, we refer you to Article 7332, V. A. C. S., and quote therefrom that portion pertinent to your inquiry as follows:

". . . .

"The District Clerk shall receive a fee of Two (\$2.00) Dollars in full for his services in each case.

". . . .

"Provided, that the fees herein provided for in connection with delinquent tax suits shall constitute the only fees that shall be charged by said officers for preparing, filing, instituting, and prosecuting suits on delinquent taxes and securing collection thereof, and all laws in conflict herewith are hereby repealed.

". . . ."

Trusting that we have sufficiently answered your questions, we remain

APPROVED FEB 25, 1944
Gross

ATTORNEY GENERAL OF TEXAS

HJ/pw

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY *Holman Jenkins*
Holman Jenkins
Assistant

