



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS

ATTORNEY GENERAL

Modified by 0-6780

Honorable Charles A. Tosch
County Auditor
Dallas County
Dallas 2, Texas

Dear Sir:

Opinion No. 0-5937

Re: Allocation to be made of funds
paid in lieu of taxes to county
by Federal Housing Authority.

Your letter of March 18, 1944, requests the opinion of this department on the above subject. We quote the full text of the letter as follows:

"I have before me a copy of your opinion No. 0-527 * rendered by your department on May 29, 1943, in which you advise that all money received in lieu of taxes by the State Treasurer from the Federal Housing Authority is subject to allocation by the Legislature at its next meeting.

"I will thank you to advise me whether or not it will be necessary for the County Treasurer to wait until the Legislature enacts a law allocating the funds in question, or can the Commissioners' Court of the various Counties pass an order allocating the money received by them to the General Fund of the County, or will it be necessary to make a distribution of all funds of the County?

"In your opinion above referred to, you treat this money as a gift and not as taxes, so therefore it might not be necessary for the Housing Authority to make this payment directly to the Tax Collector's Office."

*Our Opinion No. 0-5270.

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Title 40, Chapter 8, U. S. C. A., "Emergency Public Works and Construction Projects," enacted by Congress in 1933, and Title 42, Chapter 8, U. S. C. A., entitled "Low Rent Housing," enacted by Congress in 1937 created agencies of the United States Government to assist the several states and political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and unsanitary conditions and an acute shortage of decent, safe and sanitary dwelling of families of low income in rural or urban communities.

From time to time the various agencies, their duties and functions have been transferred or consolidated with other authorities by Executive Order. We will not attempt here to give the history of the numerous changes that have been made in the administration of the various housing units, but for the purposes of the question herein submitted, we will refer to "The Federal Housing Authority" only.

Following the program designed for the various agencies, the United States Government acquired real property throughout the several states, taking title to the Federal Government, thus removing from the tax rolls of the state and its political subdivisions thousands of acres of heretofore taxable land.

We do not think it necessary here to discuss the tax exempt nature of property owned by the United States Government.

By virtue of this program the states and their subdivisions were deprived of the revenue ordinarily assessed and collected on the property, and realizing that such exempt property would not bear its proportionate share of the expense of local government the Congress provided that the various projects could, by agreement with the local authorities, contract for a sum to be paid by the United States to the respective states, and political subdivisions in lieu of taxes.

Section 422, Chapter 8, Title 40, U. S. C. A., provides as follows:

"Upon request of any state or political subdivision in which any such project has been or will be constructed, the Federal Emergency Administrator

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of Public Works is authorized to enter into an agreement, and to consent to the renewal or alteration thereof, with such state or subdivision for the payment by the United States of sums in lieu of taxes. Such sums shall be fixed in such agreement and shall be based upon the cost of the public or municipal services to be supplied for the benefit of such project or the persons residing on or occupying such premises, but taking into consideration the benefits to be derived by such state or subdivision from such project."

A similar provision for the payment to the state and its subdivisions of sums in lieu of taxes, phrased in substantially the same language, is found in Section 1413, Chapter 8, Title 42, U. S. C. A., paragraph (c) of such reading as follows:

"(c) . . . the amount so paid for any year upon any such property shall not exceed the taxes that would be paid to the State or subdivision, as the case may be, upon this property if it were not exempt from taxation thereby."

From the above we find that the United States Government, though denying any liability for taxes, has submitted to contract binding itself to bear the proportionate share of local governmental expense which its property represents in a county or subdivision, and is to receive therefor the services of the local government that taxable property would receive.

Pursuant to the numerous Congressional Acts and Executive Orders discussed above, the Legislature of Texas, recognized the need of cooperative steps and enacted two measures designed to effect the purpose.

Article 1269k, Vernon's Annotated Civil Statutes, Amendatory Act of 1941, 47th Legislature, "Housing Authorities Law," authorized the promotion of projects in cooperation with the Federal Government and provided in Section 22 thereof payment

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in lieu of taxes, the agency to agree to make payments to the city or the county or any such political subdivision for improvements, services and facilities furnished by such city, county or political subdivision for the benefit of the housing project.

Article 2351b, -3, Vernon's Annotated Civil Statutes, pertaining to "Resettlement or Rural Rehabilitation Projects," though relating to another "Authority" of the Federal Government, authorizes the commissioners' court to enter into agreements with the United States providing for the payment of funds in lieu of taxes and requires the same services to be performed by the political subdivision as is enumerated above.

The two statutes last above cited, though acknowledging the county or other subdivision's authority to receive the payments in lieu of taxes, did not direct the commissioners' court in the application of sums received. In other words, it did not expressly direct that the monies be placed to the credit of any particular fund of the county or attempt to assert for what purposes the money should be used.

We have previously held in Opinion No. 0-5270, that sums paid to the state in lieu of taxes were gifts to the state. Such Federal owned property is subject to the same exemptions from county taxes and as the various projects have no legal obligation to pay funds here under consideration, we must construe these payments in lieu of taxes to the respective counties to be gifts.

Since the Legislature has authorized the counties to receive gifts from the United States Government, in the nature of monies paid in lieu of taxes, but has not directed the method in which said monies shall be allocated to the respective county funds, we are of the opinion that the commissioners' court by the exercise of its discretion may make disposition of the funds in any legal manner for legal purposes. The determination as to the fund or funds of the county to which this money shall be allocated is left to the commissioners' court. The County Treasurer, upon receipt of such monies, shall hold them in suspense or in an account for monies, the status of which is not known, until such

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time as the commissioners' court orders the final disposition of them.

There seems to be no necessity that such funds shall pass through the office of the County Tax Collector since the monies are not received as taxable income.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Harris Toler*
Harris Toler
Assistant

C. P. Blackburn

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