



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

✓ Honorable L. A. Woods,
State Superintendent
Austin, Texas

Dear Sir:

Opinion No. 0-5950

Re: Under the holding of the Court of Criminal Appeals in the case of Admson v. State, 171 S. W. (2d) 121, paragraph 14 of the opinion can the Longview Independent School District have its taxes assessed and collected by its own assessor and collector?

We are in receipt of your letter of recent date, requesting an opinion on the question stated in your letter, reading as follows:

"In view of the holding of the Court of Criminal Appeals in the case of Admson v. State, 171 S. W. (2d) 121, paragraph 14 of the opinion, can the Longview Independent School District have its taxes assessed and collected by its own assessor and collector.

" I am enclosing an argument in connection with this problem which may be of some assistance.

Your usual prompt consideration and opinion of this matter will be greatly appreciated. "

Replying to the foregoing, you are advised that, in our opinion, the opinion in the case of Admson vs State, 171 S. W. (2d) 121 does not hold that an Independent School District can not have its own assessor and collector. In that case, the Hedley Independent School District appointed a man "to collect the school tax" who shortly thereafter was elected county assessor and collector.

Honorable L. A. Woods Page 2

He never made bond nor qualified as assessor and collector of the school district, but did collect the school tax for the years 1939 and 1940. He was indicted for conversion of certain funds of the school district. The Court of Criminal Appeals held that there had been no office of tax assessor and collector of the district created and that Adamson could not be prosecuted as an "officer" of the district, but should have been prosecuted as an officer of the County. The Court further held that

" . . . if it be thought that the act of the school trustees in designating appellant as collector of taxes for the school district created the office of school district collector of taxes, then his subsequent qualification as county assessor and collector on January 2, 1939 vacated the office of district collector, and under the holding in *Fruitt et al v. Glen Rose Independent School District No. 1* 120 Tex. 45, 82 S. W. (2d) 1004, 100 ALR 1158, and *Odes vs Sinton Independent School District, Tex. Com App. 234, S. W. 1090*, he could not thereafter be regarded even as a de facto officer of the school district.

"If the trustees dealt with appellant as a private citizen when they designated him as collector for the district, and their said act did not create the district office of collector--as heretofore indicated--then appellant should have been prosecuted as agent of the school district for the collection of the taxes, and not as an officer of the district; for, as contended by appellant, he received the tax money not by virtue of his office but under a contract with the trustees."

In the case of *First Baptist Church vs City of Fort Worth, Tex Com App. 26 S. W. (2d) 196-198* it was claimed that an assessment of taxes was void because the party making the assessment was attempting to hold two offices of emolument in violation of Article 16, Section 40 of the State Constitution, but in the act incorporating the Fort Worth Independent School District, it was provided that the assessment and collection of taxes for the district should be made by the assessor and collector of the City of Fort Worth. It was held that no new office of assessor and collector for the school district was created, but that only additional duties were imposed upon the City assessor and collector, and that, therefore, there was not violation of said Article 16, section 40 of the Constitution.

Honorable L. A. Woods Page 3

In neither of these cases, the Hedley Independent School District and the Fort Worth case, was it held that no authority existed for an independent district to have its taxes assessed and collected by its own assessor and collector. In the Hedley case it was in fact held that it could have appointed its own assessor and collector, and in the Fort Worth case it was held that the special act provided expressly that the taxes of the district should be assessed and collected by the City assessor and collector of the City of Fort Worth.

The Longview Independent School District was created by House Bill No. 386, 31st Legislature and contains the following language:

"That the Longview Independent School District shall have and exercise and is hereby invested with all the rights, powers, privileges and duties granted under and by the general laws of this State to independent districts formed by the incorporation of a town or village for free school purposes only; and the board of trustees of said Longview Independent School District shall have and exercise and are hereby invested and charged with all of the rights, powers, privileges and duties conferred and imposed by the general laws of this State upon the trustees of Independent School Districts"

What are some of the "rights, powers, privileges and duties" conferred and imposed by the general laws? Article 2779 Vernon's Rev. Civ. Statutes reads as follows:

"Said trustees shall meet within twenty days after the elections or as soon thereafter as possible, for the purpose of organizing. A majority of said board shall constitute a quorum to do business. They shall choose from their number a president, and they shall choose a secretary, a treasurer, assessor and collector of taxes, and other necessary officers and committees."

This provision has been in the general law since 1905.

Article 2791, Vernon's F. C. S. reads as follows:

"The district tax assessor and collector shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the city marshal of incorporated towns or villages,

and he shall receive such compensation for his services as the board of trustees may allow, except in cities and towns provided for, not to exceed four per cent of the whole amount of taxes received by him. He shall give bond in double the estimated amount of taxes coming annually into his hands, payable to and to be approved by the president of the board, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the board all funds coming into his hands by virtue of his office as such assessor and collector; provided that in the enforced collection of taxes the board of trustees shall perform the duties which devolve in such cases upon the city council of an incorporated town or city, the president of the board of trustees shall perform the duties which devolve in such cases upon the mayor of an incorporated city or town, and the county attorney of the county in which the independent school district is located shall perform the duties which in such cases devolve upon the city attorney of an incorporated city or town under the provisions of the law applicable thereto. It shall be within the discretion of the board of trustees of any independent school district to name an assessor of taxes who shall assess the taxable property within the limits of the independent school district within the time and in the manner provided by existing laws, in so far as they are applicable, and when said assessment has been equalized by a board of equalization appointed by the board of trustees for that purpose, shall prepare the tax rolls of said district and shall duly sign and certify same to the county tax collector as provided for in the succeeding article. The said assessor of taxes shall receive a fee of two per cent of the whole amount of taxes assessed by him as shown by the completed certified tax rolls."

Article 2792, Vernon's R. C. S. reads as follows:

"When a majority of the Board of Trustees of an Independent District prefer to have the taxes of their District assessed and collected by the County Assessor and Collector, or collected only by the County Tax Collector, same shall be assessed and collected by said County Officers and turned over to the Treasurer of the Independent School District for which such taxes have been collected. . . . and in such cases the

County Tax Assessor and Collector shall assess the taxes for said District on separate assessment blanks furnished by said District and shall prepare the rolls for said District in accordance with the assessment values which have been equalized by a Board of Equalization appointed by the Board of Trustees for that purpose. If said taxes are assessed by a Special Assessor of the Independent District and are collected only by the County Tax Collector, the county Tax Collector in such cases shall accept the rolls prepared by the Special Assessor and approved by the Board of Trustees as provided in the preceding Article. When the County Assessor and Collector is required to assess and collect the taxes of Independent School Districts he shall respectively receive one per cent (1%) for assessing, and one per cent (1%) for collecting same."

It will be seen from the foregoing that the Longview Independent School District may adopt either of the two plans authorized. That is to say, it may appoint its own assessor and collector, or it may have the taxes assessed and collected by the county assessor and collector, but if assessed and collected by the County Assessor and Collector the valuations of property must be the same as for State and County purposes.



Yours very truly

ATTORNEY GENERAL OF TEXAS

C. F. Gibson

By C. F. Gibson Assistant

CFG:NCD

APPROVED MAY 5, 1934

C. Blackburn

ATTORNEY GENERAL OF TEXAS