



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable T. P. Buffington
County Attorney
Grimes County
Anderson, Texas

Dear Sir:

Opinion No. 0-6117

Re: Assessing and Collection
of sheriff's fees and
county attorney's fees as
part of the costs of delin-
quent tax suits under the
facts stated.

Your letter of April 28, 1945, requesting the opin-
ion of this department on the question stated therein is
in part as follows:

"I have been requested by our District
Clerk to request an opinion on the follow-
ing:

"Art. 7335 (Vernon's) provides, 'but such
fees shall nevertheless be collected as part
of the costs of suit and applied on the pay-
ment of the compensation allowed the attorney
prosecuting the suit, etc.' Acts 2nd and 3rd
C. S. 1923.

"Art. 7332 (Vernon's) provides where County
Attorney or District Attorney fails to act that:
'and in such instances the fees herein provided
for such officers shall not be assessed or col-
lected.' 42nd Leg. 2nd C. S. 1931.

"Should the District Clerk put the \$2.00
attorney's fees as part of the costs?

Hon. T. P. Buffington, page 2

"Where defendant waives citation and sheriff performs no service in the tax suit, shall the sheriff's \$2.00 fee be nevertheless assessed by the District Clerk?

"There is a contract for the collection of taxes in Grimes County, the collector of the tax wishes the \$2.00 attorney's fee assessed and paid to him."

Article 7332, Vernon's Annotated Civil Statutes, is in part as follows:

"The County or District Attorney shall represent the State and County in all suits against delinquent tax-payers, and all sums collected shall be paid over immediately to the County Collector.

"Before filing suits for the recovery of delinquent taxes for any year, notice shall be given to the owner or owners of said property as is provided for in Article 7324 of the Revised Civil Statutes of Texas, 1925, as amended by Chapter 117, Page 196, Acts of the Forty-Second Legislature, Regular Session. The fees herein provided for shall not accrue to nor shall the various officers herein named be entitled thereto in any suit unless it be proved that notice has been given to the owner for the time and in the manner provided by law.

"In all cases, the compensation of said Attorney shall be Two (\$2.00) Dollars for the first tract and One (\$1.00) Dollar for each additional tract up to four (4), but said fee in no case to exceed Five (\$5.00) Dollars. And provided, that in any suit brought against any individual or corporate owner, all past due taxes for all previous years on such tract or tracts shall be included; and provided, further that where there are several lots in the same addition or subdivision delinquent, belonging to the same owner, all said delinquent lots shall be made the subject of a single suit.

"All fees provided for the officers herein shall be treated as fees of office and accounted for as such, and said officers shall not receive nor retain said fees in excess of the maximum compensation

Hon. T. P. Buffington, page 3

allowed said officers under the laws of this State; and provided further that the County Attorney, Criminal District Attorney or District Attorney shall not be entitled to the fees herein provided for in instances where such delinquent taxes are collected under contracts between the Commissioners' Court and others for the collection of such taxes, and in such instances the fees herein provided for such officers shall not be assessed nor collected.

"The Sheriff or Constable of the County in which the suit is pending shall receive a fee of Two (\$2.00) Dollars in each case which will cover the service of all process, and the selling of the property and executing deeds for same. If, in any such suit, process is issued to be served in Counties other than the one in which the suit is pending, the Sheriff or Constable serving the same shall receive a fee of One (\$1.00) Dollar in each suit for his services.

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

"The County Clerk shall receive One (\$1.00) Dollar 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."

Art. 7333, V. A. C. S., provides:

"In each case such fees shall be taxed as costs against the land to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon are paid, and in no case shall the State or county be liable therefor."

Art. 7335, V. A. C. S., is as follows:

Hon. T. P. Buffington, page 4

"Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such land, but all such payment and expenses shall be contingent upon the collection of such taxes, penalty and interest. It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys."

Art. 7335a, V. A. C. S., provides:

"Sec. 1. No contract shall be made or entered into by the Commissioners' Court in connection with the collection of delinquent taxes where the compensation under such contract is more than fifteen per cent of the amount collected. Said contract must be approved by both the Comptroller and the Attorney General of the State of Texas, both as to substance and form. Provided, however, the County or District Attorney shall not receive any compensation for any services he may render in connection with the performance of the contract or the taxes collected thereunder.

"Sec. 2. Any contract made in violation of this Act shall be void."

Mon. T. P. Buffington, page 5

Art. 7332, V. A. C. S. was last amended in 1931 by the 42nd Leg., 2nd C. S., p 31, Chap. 16.

Art. 7335, V. A. C. S. was last amended in 1923, Acts of the 3rd C. S., p 182.

Art. 7332, as amended, is a later statute than Art. 7335.

It will be noted that Art. 7335, referring to the fees of district and county attorneys, expressly provides that such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit. Art. 7332, referring to such fees, expressly provides that the foregoing officials "shall not be entitled to the fees herein provided for in instances where such delinquent taxes are collected under contracts between the Commissioners' Court and others for the collection of such taxes, and in such instances the fees herein provided for such officers shall not be assessed nor collected."

Arts. 7332 and 7335 are statutes in pari materia regarding the assessment and collection of the above mentioned fees for district attorneys or county attorneys in delinquent tax suits.

It is stated in Tex. Jur., Vol. 39, p. 253:

"It is a settled rule of statutory interpretation that statutes which deal with the same general subject, have the same general purpose, or relate to the same person or thing or class of persons or things, are considered as 'in pari materia' (in relation to the same matter), although they contain no reference to one another, and although they were passed at different times or at different sessions of the Legislature.

"In order to arrive at a proper construction of a statute, and determine the exact legislative intent, all acts and parts of acts in pari materia will, therefore, be taken, read and construed together, each enactment in reference to the other, as though they were parts of law. Any conflict between their provisions will be harmonized, if possible, and effect will be given to all the provisions of each act if they can be made to stand together and have concurrent efficacy.

Hon. T. P. Buffington, page 6

"The purpose of the in pari materia rule of construction is to carry out the full legislative intent, by giving effect to all laws and provisions bearing upon the same subject. It proceeds upon the supposition that several statutes relating to one subject are governed by one spirit and policy, and are intended to be consistent and harmonious in their several parts and provisions. The rule applies where one statute deals with a subject in comprehensive terms and another deals with a portion of the same subject in a more definite way. On the other hand, the rule is not applicable to enactments that cover different situations and which were apparently not intended to be considered together."

As heretofore stated, Arts. 7332 and 7335, regarding the fees of county attorneys, criminal district attorneys, or district attorneys in delinquent tax suits, are in pari materia and it is impossible to reconcile them, as one statute expressly provides that such fees shall not be assessed nor collected, and the other expressly provides that such fees shall nevertheless be collected as part of the costs of the suit and applied on the payment of the compensation allowed the attorney prosecuting the suit. The older statute will be held to be repealed by implication to the extent of the conflict. Under such circumstances, it is presumed that the Legislature intended to repeal all laws or parts of laws clearly inconsistent with its later Act. Generally speaking, an Act that is later in point of time controls, repeals or supersedes an earlier Act insofar as the two are inconsistent and irreconcilable, and both cannot stand at the same time.

You are respectfully advised it is the opinion of this department that Art. 7332, as amended, a later statute than Art. 7335, repeals or supersedes said Art. 7335 insofar as said statutes conflict with reference to the assessing and collecting of fees for county attorneys, criminal district attorneys, or district attorneys in instances where delinquent taxes are collected under contract between the Commissioners' Court and others. You are further advised that the fees provided for county attorneys, criminal district attorneys, or district attorneys in delinquent tax suits should not be assessed nor collected in cases where delinquent taxes are collected under contract between the Commissioners' Court and others for the collection of such taxes.

Hon. T. P. Buffington, page 7

We now consider your second question regarding the sheriff's fees in delinquent tax suits. It will be noted that Art. 7332 expressly provides that the sheriff or the constable of the county in which suit is pending shall receive a fee of \$2.00 in each case which will cover the service of all process, and the selling of the property and executing deeds for same. You stated in your letter that the defendant waived citation and that the sheriff performed no service in the tax suit. This being true, it is our opinion that the \$2.00 fee for the sheriff or constable should not be assessed in this case, as there was no service performed by either of them. It is well established in this State that before an officer is entitled to receive fees or commissions, receipt thereof must have been provided for and the amount fixed by law; and he must have performed the services for which compensation has been specified. (See Tex. Jur., Vol. 34, p. 522, and the authorities cited therein.)

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:LJ

[Handwritten Signature]
MAY 10 1945
ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY *BWB*
CHAIRMAN