



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

*overruled by
NW-1379 where
conflicts*

Honorable H. A. Hodges
County Auditor
Williamson County
Georgetown, Texas

0-6352

Dear Sir:

Opinion No. 0-6352

Re: Whether the Commissioners' Court is liable for any fees taxed as costs in delinquent tax suits under the facts stated.

Your letter of recent date requesting the opinion of this Department on the questions stated therein is, in part, as follows:

"I shall greatly appreciate having your opinion relative to the following questions:

"1. When property is sold by the County, or several taxing units joined, and does not bring the amount of court costs, including Attorneys fees representing unknown heirs, does the Commissioners Court have authority to approve the payment of the costs, or their portion, to the Clerk of the Court and to the Attorney?

"2. When there is not sufficient money received from such a sale does the County have authority to pay the Printer, or their portion, his cost for advertising?

"To clear the tax records several suits have been tried in this County where the land is of practically no value, leading into very low places on creeks and water soaked land, thus would bring only a very small amount and not sufficient to cover all the Court costs and Attorneys fees and advertising, yet the services have been rendered and the interested parties feel they should be paid, especially the Printers. The Printer is not a County Official

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in any respect and states he does not intend to advertise free, others feel the same way and I readily understand their view point and agree they should be paid in some manner."

Articles 7331 and 7332, Vernon's Annotated Civil Statutes, provide certain fees in tax suits for the various officers concerned and named therein. It will be noted that Article 7333, Vernon's Annotated Civil Statutes, expressly provides that in each case such fees, meaning the fees provided for in Art. 7332, shall be taxed as cost against the land, etc. It is then expressly provided "and in no case shall the State and County be liable therefor." Referring to the language of the above mentioned statutes in the case of Grant, et al, v. Ellis (Comm. of App.) 50 S. W. (2d), 1093, the Court said that "this language certainly evidences a direct legislative intent to expressly prohibit the rendition of any judgment against the State and County for costs, or fees classed as such." It will be noted that the above mentioned statutes are not applicable to or make no reference to compensation allowed attorneys ad litem, appointed by the Court to represent unknown heirs, unknown or non-resident owners cited by publication as provided by statute. It will also be noted that Article 7331, providing certain fees for the tax-collector expressly provides "that in no case shall the State or County be liable for said fee." Rule No. 244 (Rules of Practice and Procedure in Civil Actions promulgated by the Supreme Court of Texas) provides:

"Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the Court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof. The court shall allow such attorney a reasonable fee for services, to be taxed as a part of the costs."

Section 6 of Art. 7345b, V. A. C. S., provides:

"All court costs, including costs of serving process, in any suit hereafter brought by or in behalf of any taxing units for delinquent taxes in which suits all other taxing units having a delinquent tax claim against such property of any part

thereof, have been impleaded, together with all expenses of foreclosure sale and such reasonable attorney's fees as may be incurred by the interpleaded or intervening taxing units, not exceeding ten per cent (10%) of the amount sued for, such attorney's fees to be subject to the approval of the court together with such reasonable expenses as the taxing units may incur in procuring data and information as to the name, identity and location of necessary parties and in procuring necessary legal descriptions of the property, shall be chargeable as court costs."

Sec. 9 of Art. 7345b, V. A. C. S., reads, in part, as follows:

"If the property be sold to any taxing unit which is a party to the judgment under decree of court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same, and such property shall not be sold by the taxing unit purchasing same for less than the adjudged value thereof or the amount of the judgments against the property in said suit. . . ."

When you refer to attorneys representing unknown heirs, we assume, for the purposes of this opinion, that you have referred to attorneys ad litem appointed under Rule 244. It is apparent from the facts stated in your letter that the taxing unit purchasing the property at the original sale has since sold said property joined by the other taxing units concerned. In view of the foregoing statutes you are respectfully advised that it is the opinion of this department that the Legislature has specifically provided that all costs and expenses in delinquent tax suits (Art. 7345b) shall be paid prior to the apportionment to the various taxing units of their respective

shares and proceeds of the tax sale. Stated differently, the costs and expenses incurred in such tax suits are not payable until after sale of the property is made by the taxing unit which purchased the same at the original sale. In Section 9 (Art. 7345b) the Legislature specifically provided: "And costs and expenses shall not be payable until sale by such taxing units so purchasing the same." None of the fees or expenses mentioned in your letter may be paid until after the property has been sold by the taxing unit which purchased the same at the first sale. After such sale, however, said costs are to be paid first out of the proceeds of the sale. In no event is the State or County liable for any of the fees or expenses mentioned in your letter.

The County has no authority, whatsoever, to pay all or any portion of the fees and expenses mentioned out of county funds.

Yours very truly,

APPROVED JAN 13 1945
[Signature]
ATTORNEY GENERAL OF TEXAS

ATTORNEY GENERAL OF TEXAS

By *[Signature]*
Ardell Williams
Assistant

AW:rt

