



**THE ATTORNEY GENERAL  
OF TEXAS**

GROVER SELLERS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable A. E. Hickerson  
County Auditor  
Montgomery County  
Conroe, Texas

Dear Sir:

Opinion No. O-6380  
Re: Valuation contract between  
Montgomery County and the  
firm of Pritchard and Abbott

We are in receipt of your communication of recent date requesting the opinion of this department on the above stated matter. Also, we have received briefs prepared by the attorneys representing the County Judge.

We quote from your letter as follows:

"On Monday, January 8, the Commissioners' Court of Montgomery County sitting in Regular Monthly Session and conducting its regular monthly business, was presented with an application from Pritchard & Abbott, Valuation Engineers of Fort Worth, Texas

"In discussing the matter, the County Judge, after expressing opposition to the contract, left the Court Room. Then, the four remaining Commissioners organized and elected one Commissioner to be Presiding Officer in the absence of the County Judge, at which time they approved a contract with Pritchard & Abbott.

"For your convenience, I am enclosing a copy of the contract approved by the four Commissioners, also a copy of the Docket Items covering the organization of the Court and the approval of the Contract.

"I am advised that the authority for four commissioners to approve a contract in the absence of the county judge, is in the case of Dalton vs. Alley, 215 S.W. 439; also 110 Texas, page 68.

"Will you please advise me whether I can legally approve payments to Pritchard & Abbott on the contract. Also advise me as to the legality of the construction of the contract."

"The contract submitted by you reads as follows:

"STATE OF TEXAS                    |  
COUNTY OF MONTGOMERY            |        KNOW ALL MEN BY THESE  
  |        PRESENTS:

"That, WHEREAS, the Commissioners' Court of MONTGOMERY County, Texas, has determined that it would be wise and to the best interest of said County for it to employ experts skilled in the matter of appraising and valuing oil and gas properties and public utility properties in said County, said experts to compile and furnish data and information to said Court sitting as a Board of Equalization for the purpose of equalizing valuations of such properties as compared with other property valuations in said County for tax purposes for the year 1945, and said data and information to be made available in respect to all of such properties properly and lawfully coming before it for consideration in the equalization of values upon renditions made by the owners thereof, or upon renditions made by the Tax Assessor where the owner, or owners, may fail to render the same; and,

"WHEREAS, said Court finds that Pritchard and Abbott, a partnership of Fort Worth, Texas, are skilled in such matters and have scientific and technical knowledge in respect to the appraising and valuing of such properties and many years experience in the matter of appraising and valuing such properties; and

"WHEREAS, Pritchard and Abbott, have proposed to said Commissioners' Court of MONTGOMERY County that they will gather and compile information relating to the value of oil and gas and public utility properties as of January 1, 1945, and make said information completely available to said Court, to be used by it as it may see fit in determining what values should be assigned to said properties properly coming before it for consideration; and will charge for their services a sum of \$10,000.00 (Ten Thousand Dollars).

"IT IS THEREFORE AGREED by and between MONTGOMERY County, Texas acting herein by and through its Commissioners Court, Party of the First Part, and Pritchard and Abbott, of Tarrant County, Texas, Parties of the Second Part as follows:

"Parties of the Second Part agree to compile a complete list of the record owners of all oil and gas producing properties wherever situated and located in Montgomery County, Texas, and all undeveloped leases and royalty interests adjacent thereto, as of January 1, 1945,

said compilation and record to show the particular interest or interests therein owned; and also a complete list of all public utility properties located in said County as of January 1, 1945.

"Parties of the Second Part also agree to secure and make available for the use of Party of the First Part information showing the values of said properties to be considered by Party of the First Part as it may deem fit in determining the proper values for tax assessment purposes for 1945, to be assigned to such of said properties as may come before the Party of the First Part sitting as a Board of Equalization for consideration upon renditions made by the owners thereof, or upon renditions made by the tax assessor where the owner, owners, fail or refuse to render the same.

"FOR AND IN CONSIDERATION of the skilled services, technical knowledge and experience of Parties of the Second Part in the performance of the obligations devolving upon them hereunder, and in consideration of the information given and assistance furnished by them to Party of the First Part in undertaking to value and equalize the value of said properties properly coming before it for consideration at its equalization hearings in the year 1945, Party of the First Part agrees and obligates itself to compensate Parties of the Second Part as follows:

"FOR THE SERVICES HEREIN AGREED to be performed Second Party shall receive the said sum of Ten Thousand (\$10,000.00) Dollars, to be paid out of the General Fund of Montgomery County.

"IT IS FURTHER AGREED AND UNDERSTOOD by both Parties that Montgomery County, Texas, will issue, or cause to be issued to Pritchard and Abbott warrants drawn against the General Fund of said Montgomery County, Texas, and payable out of the current revenues of 1945.

"PARTY OF THE FIRST PART hereby specially contracts and obligates itself to, at any time same may become necessary, pass and enter of record such orders as may be proper and necessary to legalize and facilitate the payment of all sums due Party of the Second Part.

"SAID PRITCHARD AND ABBOTT, further agree that in no way will the said Montgomery County be obligated to said Pritchard and Abbott, or their assistants, for salaries, expense, or material, except as above stated.

"WITNESS our hands in duplicate this the 8 day of January, A.D., 1945.

COUNTY OF MONTGOMERY  
Party of the First Part

By \_\_\_\_\_  
County Judge

signed:  
GUY STRIPLING  
Commissioner, Precinct #1  
Presiding Officer.

signed:  
FLOYD STEWART  
Commissioner, Precinct #2

signed:  
GUINN SANDERS  
Commissioner, Precinct #3

signed:  
H. C. FURLOW  
Commissioner, Precinct #4

ATTEST:

signed:  
CORY A. BEARD  
County Clerk, Montgomery  
County, Texas

By-signed:  
W. J. Graybill, Depty.

PRITCHARD & ABBOTT  
Parties of the Second Part.

By  
signed:  
J. H. Abbott"

For the purpose of this opinion, our discussion shall be confined to the validity of the contract submitted. We shall not go into the circumstances under which the commissioners' court entered its order with reference to this contract, for in this matter a fact determination is involved, about which some controversy is indicated, and it is not the policy of this department to determine questions of fact.

In Opinion No. 0-5909, this department held that a contract similar to the one submitted by you was valid. Herein we shall give further consideration to the matters involved in a contract of this nature.

Article 7206, Vernon's Annotated Civil Statutes, provides:

"Each commissioners court shall convene and sit as a board of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.

"1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, ets., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.

"2. They shall have power to correct errors in assessments.

"3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second-class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small value or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.

"4. After they have inspected and equalized as nearly as possible, they shall approve said lists of books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same if same be found correct.

"5. Whenever said board shall find it their duty to raise the assessment of any person's property, they shall order the county clerk to give the person who rendered the same written notice that they desire to raise the value of same. They shall cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.

"6. The assessors of taxes shall furnish said board on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath required by law, together with the assessment of said person's property made by him through other information; and said board shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved. Acts 1879, p. 44; Acts 1909, p. 373; G.L. vol. 8, p. 1344."

Article 7211, V. A. C. S., provides:

"Hereafter when any person, firm or corporation

renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor, he shall so notify the assessor, and if desiring so to do make oath before the assessor that the valuation so fixed by said officer on said property is excessive; such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property on January First, 19\_\_ (here give year for which assessment is made) as is herein provided; such officer or court shall take into consideration what said property could have been sold for any time within six months next before the first day of January of the year for which the property is rendered. Acts 1925, pp. 48 and 382, 39th Leg., ch. 20, § 2, and ch. 167, § 2."

Article 7212, V.A.C.S., provides:

"The boards of equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and if satisfied that the valuation of any property is not in accordance with the laws of the State, to increase or diminish the same and to affix a proper valuation thereto, as provided for in the preceding article; and, when any assessor in this State shall have furnished said court with the rendition as provided for in the preceding article, it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality and quantity of such property, as well as the value thereof.

Said court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in the preceding article; and their action in such case or cases shall be final. Id."

The foregoing provisions authorize the organization of the Commissioners' Court as a Board of Equalization and define the Board's powers and duties with reference to its consideration of the assessments brought before it by the Assessor and Collector of Taxes, the Board's hearing of evidence as to the value of property assessed for taxation, and, as to its authority, when satisfied that any property is not properly valued, to increase or diminish same and to fix a proper valuation for said property. Under said provisions, the Commissioners' Court, sitting as a Board of Equalization, is fully and expressly empowered to equalize and set a final value on all property reported to it by the Assessor and Collector of taxes. It is mandatory that the Court, sitting as a Board of Equalization, "call before it such persons as in its judgment may know the market value, or true value of such property" (Article 7212, formerly Article 7570, Rev. St. 1911). In the case of *Brundrett v. Lucas*, 194 S. W. 613 (writ refused), the Court in setting aside a valuation fixed by the Board of Equalization, said:

"The action of the board in disregarding the testimony introduced, which testimony was not disputed, nor impeached by documentary evidence, was arbitrary and directly in the face of a mandatory statute (formerly Art. 7570, Rev. St. 1911, now Art. 7212, V. A. C. S.) and furnished a sufficient basis for a suit in the district court to enjoin the collection of taxes upon the increased values thus made in the assessments.

". . . . We do not think the failure of the board to comply with the terms of a mandatory statute can be justified by showing that, if the same witnesses had been summoned and the same evidence introduced as upon the hearing in the district court, the order of the board would have been sustained by evidence. . . ." (Under-scoring and parentheses ours)

Holdings to the same effect are found in *Harlingen Independent School District v. Dunlap*, 146 S.W. (2d) 235 (writ refused); *City of Comanche v. Brightman*, 88 S.W. (2d) 74; *Netherland Independent School District v. Carter*, 73 S. W. (2d) 935; and *Ernest v. Standefer*, 54 S.W. (2d) 229.

The Commissioners' Court has the implied authority to employ reasonable means to enable it to exercise the powers and discharge the duties imposed upon it by law. In numerous

instances, our courts have sustained contracts which involved expert and professional assistance to the Commissioners' Court in carrying out its statutory powers and duties (Cottle County v. McClintock & Robertson, Civ. App., 150 S. W. (2d) 134, error dismissed; Galveston County v. Gresham, 220 S.W. 560, writ refused; Hidalgo County Water Improvement District No. 2. v. Feick, Tex. Civ. App., 111 S.W. (2d) 742, writ dismissed; Cherokee County v. Odom, Tax Coll., 118 Tex. 288, 15 S. W. (2d) 538; Von Rosenberg v. Lovett, 173 S. W. 580; Roper v. Hall, 280 S. W. 298; and Federal Royalty Co. v. State, 42 S. W. (2d) 670.

In the case of Roper v. Hall, supra, the Court held, in effect, that the County Commissioners' Court has implied power to contract for the compilation of data for its use, while sitting as a Board of Equalization, in determining taxable value of oil and gas properties in the county. In this case the Court said:

"The general powers so given to the Commissioners Court are of little practical value, without the further authority to use adequate means to insure the proper, intelligent, and effective exercise thereof."

The holding in the foregoing case with reference to the authority of the Commissioners' Court to make such contracts under its implied power was followed in the case of Federal Royalty Co. v. State, supra.

In the case of Von Rosenberg v. Lovett, supra, the Court, in sustaining an implied power, used this very cogent language:

"When the law requires the performance of a duty by anyone it impliedly grants him the power to do the things reasonably necessary to discharge such duty. It would be a vain thing to impose upon anyone a duty, and deny him the means whereby he could perform such duty."

A reading of the instant contract reflects that its object is the compilation and furnishing of data for the use of the Commissioners' Court, while sitting as a Board of Equalization, in its determination of the taxable value of oil and gas properties in the county. The Contractor's function is to ascertain, compile and furnish data and information to the Board of Equalization pertaining to the appraisal and valuation of properties of the kind mentioned in the contract, for the purpose of assisting the court in effectively exercising its powers and performing its duties as a Board of Equalization. In view of its nature and purpose, such information or data would pertain to the character, quantity and

quality of the properties mentioned in the contract.

In view of the time fixed by law for the assessment and equalization of values for tax purposes, it might prove to be inexpedient and impracticable for the Commissioners' Court to wait until the Assessor and Collector of Taxes had returned the assessment lists to the Board of Equalization and then have such information or data prepared as to the appraisal and valuation of the properties shown on such lists. When the information and data as to the pertinent facts in determining the valuation of such property and for equalizing same, requires scientific knowledge, technical skill and assistance, such date could not be properly ascertained in so short a time. Such information as to each piece of property of the kind and character mentioned appears to be unrelated to the rendition or assessment of said property, but rather it is preparatory to valuation and equalization by the Board at such time as the Assessor and Collector submits the renditions and assessments for its consideration in equalizing and fixing a final valuation on such property.

The Commissioners' Court, sitting as a Board of Equalization, is authorized and it is charged by law with the duty of equalizing the values of all properties returned to it by the Assessor and Collector of taxes; and, in view of the authorities heretofore submitted, we think that it has the implied power and authority to prepare itself in advance to the end that it may properly and effectively perform the duties imposed upon it by law, in respect to the properties lawfully coming before it for consideration, provided that it does not exercise said powers in such a manner as to usurp or delegate the powers and duties imposed by law upon the Tax Assessor and Commissioners' Court.

Article 8, Section 14, Constitution of Texas, as amended, in part, provides:

"And such assessor and collector of taxes shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the Legislature."

By virtue of this constitutional authority, the Legislature may, in its discretion, by general law, impose additional powers, functions and duties upon the Assessor and Collector of Taxes (Harris County v. Hall, 172 S. W. (2d) 691.) The contract under consideration discloses no attempt to extend its obligations to usurp powers theretofore imposed upon either the Assessor and Collector of Taxes or the Commissioners' Court, sitting as a Board of Equalization. The obligation imposed on and assumed by the contractor to furnish data and information to said Board for the purpose of assisting

it in equalizing the values of properties of the kind mentioned constitutes no interference with the Assessor and Collector of Taxes in the due, proper and full performance of the powers, functions and duties committed to him by law, and constitutes no attempt to initially assess (without authority of law) properties not reported to the Board of Equalization by the Assessor and Collector of Taxes; nor does it evidence any attempt to evade or refuse to perform any of the duties imposed by law upon said Board.

Article 7335a, V. A. C. S., makes special provision with reference to contracts in connection with delinquent taxes, and said article sets the maximum compensation for such services and requires that such contracts shall be approved by the Comptroller and Attorney General. We do not think that the contract under consideration comes under the provisions of Article 7335a.

It was held in the case of *White v. McGill*, 114 S.W. (2d) 860, that the words "delinquent taxes" in Article 7335a are not used in a technical sense.

In a strict or technical sense, delinquency results from non-payment of taxes after the property has been validly assessed. In a broader sense, the owner of property may be delinquent in respect to payment when his property has not been assessed, and under the holding in *White v. McGill*, supra, "delinquent taxes", as used in Article 7335a, may result from failure to render or assess as well as from failure to pay after a valid assessment.

The instant contract discloses no obligation on the part of the contractor to secure information as to whether property is rendered or unrendered or would in any way be considered delinquent as of January 1, 1945. The obligation assumed is to collect facts as to the ownership and value of property of the kind mentioned in the contract as of January 1, 1945, and to report same with supporting data to this Board of Equalization for its use in connection with equalization and fixing proper values on any such property submitted to it for equalization for the year 1945.

We have carefully considered the cases of *White v. McGill*, supra; *Sylvan Sanders Co. v. Scurry Co.*, 77 S. W. (2d) 709; *Easterwood v. Henderson County*, 62 S. W. (2d) 85; *McQuart v. Harris County*, 117 S. W. (2d) 494; *Aldrich v. Dallas County*, 167 S. W. (2d) 560, and the authorities cited in said cases in connection with the matters under consideration. Apparently the contracts involved in these cases were the same kind or type of contracts as the contract under consideration. The instant contract imposes no obligation to furnish any facts with reference to unrendered property, or

with reference to the collection of any taxes. All of the obligations assumed by the contractor will be performed prior to the time any taxes become due and before the process of collection of taxes can begin; therefore, we think that the instant contract does not come within the purview of said cases.

In view of the foregoing, it is our opinion that the above quoted contract is valid, and that it is within the scope of the authority of the Commissioners' Court to make and execute such a contract.

The necessity of making and execution of such a contract is a matter wholly within the discretion of the Commissioners' Court. Also, this department cannot pass upon the amount of the consideration involved in said contract, for that matter involves a fact determination which this department is not authorized to make.

You are further advised that before any funds should be paid out under said contract, such expenditures must have been authorized in the county budget.

Trusting that the foregoing satisfactorily answers your inquiries, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ J. A. Ellis

By

J. A. Ellis  
Assistant

APPROVED FEB. 26, 1945  
s/ Carlos C. Ashley  
FIRST ASSISTANT ATTORNEY GENERAL

Approved opinion committee By CFG, Chairman

JAE:ddt/cg