



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable George H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

*copy made 1/15/45  
11/15/45  
confidential*

Dear Sir:

Opinion No. 0-6434  
Re: Payment of costs and commissions to delinquent tax attorney when property purchased by State.

We are in receipt of your recent communication requesting the opinion of the department on the above stated matter. We quote from your letter as follows:

"I am attaching hereto a letter from Mr. A. W. Zellers, Attorney-at-Law, Weatherford, Texas, in which there are propounded to this Department certain technical questions with reference to fees accruing under a delinquent tax contract.

"I shall thank you to advise this Department the proper reply to make to this letter when answering Mr. Zellers."

The letter addressed to you from Mr. A. W. Zellers, reads, in part, as follows:

"During the past two years I acted in the capacity of Attorney for the collection of delinquent taxes in Young County and Parker County, Texas. There were various foreclosure sales under which the property was purchased by the State of Texas as provided by law in such cases. The court costs in these cases have not been paid. Neither has the commission due me as attorney's fees.

"The property is now subject to resale by the State as the two years has elapsed from the date of the original sale. This is true in some instances. There are some other cases in which the two years will not expire until August of 1945.

Honorable George H. Sheppard, Page 2

"I am not now acting and will not act in the capacity for attorney for the State in the handling of delinquent taxes in either county. I would therefore appreciate it if you would advise me as to the following questions:

"1. Is the court costs and commission due the attorney in such cases payable immediately after original foreclosure sale?

"2. If it is not payable after the original foreclosure sale then when is it payable and if payable by whom should the payment be made.

"3. Will I be entitled to collect the commissions in the event of resale made after the six months period has expired beginning January 1, 1945.

"In other words I would like to know whether or not in the event these properties are resold after the six months has expired during which I have the time of winding up all suits and litigation, am I entitled to be paid the commission and if so by whom is it to be paid.

". . . ."

Also, among other items, you enclosed a copy of the uniform delinquent tax contract between Young County and A. F. Zellers, which, due to its great length, we shall not quote herein.

Section 9, Article 7345b, V. A. C. S., in part, provides:

"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

Honorable George H. Sheppard, Page 3

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, whichever is lower, without the written consent of all taxing units which in said judgment have been found to have tax liens against such property; and when such property is sold by the taxing unit purchasing same, the proceeds thereof shall be received by it for account of itself and all other said taxing units adjudged in said suit to have a tax lien against such property, and after paying all costs and expenses, shall be distributed among such taxing units pro rata and in proportion to the amount of their tax liens against such property as established in said judgment. . . .

"Provided that if sale has not been made by such purchasing taxing unit before six months after the redemption period provided in Section 12 hereof has expired, it shall thereafter be the duty of the Sheriff upon written request from any taxing unit who has obtained a judgment in said suit, to sell said property at public outcry to the highest bidder for cash at the principal entrance of the courthouse in the county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution. . . . The Sheriff shall apply the proceeds from such sale, first, to the payment of all costs in said unit and all costs and expenses of sale and resale and all attorney's fees and reasonable expenses taxed as costs by the Court in said suit and shall distribute the balance

Honorable George H. Sheppard, Page 4

among the taxing units participating in said original judgment pro rata and in proportion to the amount of their tax liens against such property as established in said judgment."

Article 7332, V. A. C. S., in part, provides:

". . . .

"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. . . ."

Article 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."

Article 7335, V. A. C. S., provides:

"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 lands, 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

Honorable George H. Sheppard, Page 5

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."

In view of the facts submitted, and after carefully considering the pertinent statutory provisions and the terms of the contract submitted, you are advised that the costs and commissions referred to will not be payable until the property is sold by the taxing unit. When such property is sold in the manner provided by law, the Sheriff shall then apply the proceeds first to the payment of expenses, fees, etc., which have been taxed as costs, to which various parties may be entitled, and he shall distribute the balance among the taxing units pro rata and in proportion to their tax liens against said property. With reference to the State and County as taxing units, it is our opinion that the proportionate amount remaining to the credit of the State and County after costs have been paid, should be paid to the County Tax Assessor and Collector. When the delinquent tax attorney has filed suit during the term of the contract and secures a judgment on said suit in the trial court within six months from the termination date of the contract, we think that said attorney has established his interest in the proceeds of said judgment, and that at such time as the taxing unit actually collects the money on said judgment secured by the efforts of said attorney, he is entitled to receive his percentage (10%) of the money actually collected, less such amount, if any, that may have been applied on his compensation in the form of fees taxed as costs, under the provisions of Article 7335. After the costs have been paid and the County and State's pro rata amount of the money from the judgment has been received, such amount of commission as may be due to the delinquent tax attorney should be paid to said attorney by the County Tax Assessor and Collector and should be properly accounted for in the Tax Assessor and Collector's monthly report.

Honorable George H. Sheppard, Page 6

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS



By



J. A. Ellis  
Assistant

JAE:ddt

