



THE ATTORNEY GENERAL
OF TEXAS

GROVER SELLERS

AUSTIN 11, TEXAS

~~JOHN W. BARKER~~
ATTORNEY GENERAL

Hon. D. W. Burkhalter
Acting County Attorney
Box 953
Throckmorton, Texas

Dear Sir:

Opinion No. 0-6692

Re: Is the clause in a contract for collection of delinquent taxes permitting the contractor six months after the termination of the contract to prosecute suits filed to final judgments valid? And a related question.

You have requested our opinion upon the following questions:

1. Is the clause in a delinquent tax contract permitting the contractor six months after the termination of the contract to prosecute suits to final judgments valid, and is the tax attorney entitled to his commissions on all taxes so collected during this six months period?

2. Is the delinquent tax attorney entitled to collect the costs that have been paid in to the collector, when he has not done anything except file suit? If not, who is entitled to such costs?

This department in opinion No. 0-237A, a copy of which is enclosed, held that under contracts similar to the one in which you are interested, suits for delinquent taxes filed by the tax attorney during the contract period and settled by him within six months after the termination date are clearly contemplated by the contract, and that the commission to be received by the attorney applies without question. We therefore answer your first question in the affirmative.

Article 7332, V. A. C. S., provides the fees certain officials receive in suits for collection of delinquent taxes, and being a later statute than Articles 7335 and 7335a, controls over any provisions contrary thereto. Article 7333 provides that the fees mentioned in Article 7332 are taxed as costs in delinquent tax suits. We call your attention to that portion of Article 7332 wherein it is provided that where delinquent taxes are collected under contracts between the commissioners court and others for the collection of such taxes, the fees provided for county and district attorneys are not assessed or collected. Therefore, in your case, there are no fees which the county attorney or tax attorney could claim. If any such fees were assessed and collected, they should be returned to the taxpayer.

Under the delinquent tax contract pertinent to this opinion, the tax attorney receives 10% of the amount of all delinquent taxes, penalty and interest actually collected and paid to the tax collector during the term of the contract, which the tax attorney was instrumental in collecting. If the filing of the suits by the tax attorney was instrumental in collecting the taxes, he is entitled to his commissions; if they were not, he is not entitled to his commissions. This is a question of fact depending upon each separate case.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Robert O. Koch
Robert O. Koch
Assistant

ROK:AMM:mjs
Enclosure

APPROVED AUG 10, 1945
/s/ Carlos Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED OPINION COMMITTEE
BY /s/ BWB CHAIRMAN