



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Geo. H. Sheppard  
Comptroller of Public Accounts  
State of Texas  
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-7225

Re: Under the given facts would a tax assessment for 1946 be legal if the description is based on a plat which was not approved by the Commissioners' Court until after January 1, 1946.

We acknowledge receipt of your request for an opinion which reads as follows:

"I am enclosing letters received by this department from P. E. Dickison, Tax Assessor-Collector of Bexar County, Texas, and will thank you to advise this department the proper answer to make to these letters."

The letters of Mr. P. E. Dickison, Tax Assessor-Collector of Bexar County, Texas, are as follows:

"Sometime during the latter part of 1945 a subdivision was surveyed out of a 98-acre tract of land about one mile east of the City of San Antonio. The City Commissioners refused to endorse the plat because the streets were not as wide as they thought they should be and some other reasons; therefore, the plat was refused by the County Commissioners at that time, also.

"However, a short time ago the Attorney General ruled that the County Commissioners could not refuse a county subdivision because of the refusal of the City Commissioners to endorse it. Therefore, this plat was recently filed in the County Clerk's office

Honorable Geo. H. Sheppard, Page 2

and we are today having deeds brought into us by purchasers of the various lots in this plat desiring to assess this property under the new lot and county block numbers.

"There is a question in our minds as to whether we would be complying with the law if we set this subdivision up and permitted these lots to be assessed as the new owners are desiring to assess them. However, if it would be a legal assessment, it would relieve us of considerable work that we would have to do later on in making separations on these new purchases in order that they might pay their taxes.

"Your advice on this question will be greatly appreciated."

"We regret that our letter of April 11 was not very specific.

"The question which we would like to have answered in this matter is whether or not an assessment for 1946 would be legal if the description is based on a plat which was not approved by the Commissioners Court until after January 1, 1946, although it was presented to this body before that time and rejected for the reasons stated in our letter of April 11 which is enclosed for reference."

As to authority for approval or disapproval on the part of the Commissioners' Court of subdivision of real property situated about one mile outside of the city of San Antonio, this department rendered an opinion to Honorable A. C. Winborn, District Attorney, Harris County, Texas, being Opinion No. 0-7125, which is hereto attached and made a part hereof. It will suffice to clear up the matters of approval of subdivision of the 98 acre tract of land.

Answering your request (further) as set out by the supplemental letter, the law governing the matter of assessments under the facts is as follows:

Art. 7189, R. C. S. of Texas, provides that the assessor of taxes shall, between the first day of January and the 30th day of April each year, in his county assess the value

Honorable Geo. H. Sheppard, Page 3

of real and personal property. Said article provides also how this should be done.

An assessment of property <sup>an</sup> for taxes involves a listing of the property to be taxed and is indispensable prerequisite to validity of a tax, followed by levy and collection of the tax. The annual assessment creates a special lien upon landed property. Constitution, Article VIII, Section 15.

McKelroy v. Hamilton, C. A. 130 S. W. (2d) 1114.

Art. 7172, V. A. C. S., reads as follows:

"All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title."

While we are not dealing with collection of taxes here, but only the legality of assessment, we must not be unmindful that the lien for taxes may have to be foreclosed, and so the assessment of necessity must be such as that the lien for taxes will attach to the particular piece of property.

The matter of recording of plats of subdivisions or re-subdivisions is governed by Art. 6626 as explained in Opinion No. 0-7125 of this department hereto attached. Art. 6595 provides that the recorder (County Clerk, Art. 6591, R. C. S.) "shall without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, . . . noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record."

Art. 6596, R. C. S., provides that every instrument shall be considered as recorded from the time it was deposited for record.

The plat of the subdivision in question when filed for record, became a record, and all lots, blocks and parcels as shown in and upon said plat became separate entities as described upon said plat for the purpose of taxation, each being described

Honorable Geo. H. Sheppard, Page 4

upon said plat and the description is necessary to identify same to fix a lien thereon for taxes.

In view of the foregoing it is our opinion that your question should be answered in the affirmative, and it is so answered.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Jos. V. Frnka*

Jos. V. Frnka  
Assistant

JVF:ddt

ENCLOSURE

APPROVED JUN 10 1946

*Qui Reses*

(Action)

ATTORNEY GENERAL OF TEXAS

