



**THE ATTORNEY GENERAL,
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

October 1, 1947

Honorable Sidney J. Brown
County Attorney
Fort Bend County
Richmond, Texas

Opinion No. V-395

Re: The taxability of
certain real property
on which Sugarland In-
dustries granted cer-
tain easement rights
to Fort Bend County
Water Control and Im-
provement District.

Dear Mr. Brown:

Your request for an official opinion bearing
date of September 18, 1947, is as follows:

"A question has arisen as to whether ap-
proximately 900 acres of land owned by the
Sugarland Industries should be subject to
State and County taxes. This land is located
in the Fort Bend County Water Control and Im-
provement District number One which was cre-
ated about 1929 and the Sugarland Industries
and some of its subsidiaries conveyed certain
easement rights to the Fort Bend County Water
Control and Improvement District number One
in 1936 and these easements conveyed approxi-
mately 900 acres. Since 1937 the officials
of the Sugarland Industries have signed the
assessment rolls on the property and marked
the assessment as being exempt from taxation
because the property was owned by the Fort
Bend County Water Control and Improvement
District, a political subdivision of the
State.

"About ninety per cent of the area com-
prising the Fort Bend County Water Control
and Improvement District number One is owned
by the Sugarland Industries and a survey was
made by them of all the small lakes, sloughs,
creeks, and bayous on their land and then the
easement was conveyed to the District. The

easement contained the following provisions with reference to the purpose of the grant, to-wit:

"A prior and superior right to take, use, enjoy, and dispose of for use by others, any and all water constituting the natural flow, flood or impounded waters of Oyster Creek, subject only to such priorities, other than those which would otherwise arise by virtue of riparian rights, as may be provided by law with respect thereto."

"* * *

"The Assessor and Collector of Fort Bend County certainly does not intend to tax the Water Control and Improvement District but he is contending that Sugarland Industries should pay taxes for the past ten years on the value of their remaining interest in the property. The land is now being sold for home sites along the lake fronts and the Assessor and Collector has refused to issue tax certificates until taxes are paid upon the land for the past ten years.

Concretely your question is: "Does the granting by Sugarland Industries to the Fort Bend County Water Control and Improvement District of an easement in certain real property owned by it operate to exempt the property in question from ad valorem taxation?"

We do not think this question requires extended discussion. It is no longer a debatable question in this State, if, indeed, it ever was. A mere easement granted to the Fort Bend County Water Control and Improvement District by the Sugarland Industries will not support an exemption since the grantors remain in fact the owners of the property.

In the case of City of Corpus Christi v. State, 155 S. W. (2d) 824 (1941, error refused), the landowners granted to the city of Corpus Christi a forty-year "easement" for the construction and use of a water reservoir, the owners retaining title, the mineral rights and agricultural rights with respect to a certain portion of the tract, which however the

city could use as a reservoir in case of an "emergency." In passing upon the question, the Court stated:

"We are of the opinion that the written instrument involved is an easement deed. It is so described in the conveyance itself. Its effect was to burden the lands described therein with an easement which undoubtedly operated to decrease substantially the value of the property for farming or grazing purposes. It did not, however, diminish or destroy the title or estate of said grantors to the extent that such interest can no longer be classified as real property and taxed as such. Article 7146, Vernon's Ann. Civ. Stats.; Victory v. Hinson, 129 Tex. 30, 102 S. W. 2d 194; 40 Tex. Jur., 94, § 63."

We perceive no distinction in your case and the city of Corpus Christi case. Indeed, the facts seem almost parallel.

Articles 7146 and 7319, V. C. S. provide respectively:

"Real property for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same."

"For the purpose of taxation, real property shall include all lands within this State, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law."

It is quite apparent that this property of the Sugarland Industries is real estate subject to taxation under the foregoing statutory provisions and the Corpus Christi case, supra, notwithstanding the easement undoubtedly operates to decrease the value of the property for other purposes. However, it did not, as expressed in the language of the Corpus Christi case, "diminish or destroy the title or estate of said grantors to the

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extent that such interest can no longer be classified as real property and taxed as such."

You are, therefore, advised that the property of the Sugarland Industries involved in your opinion request is subject to taxation.

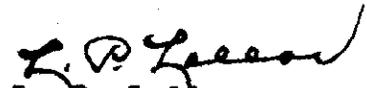
SUMMARY

An easement granted by the owner of real property to a tax exempt political subdivision of the State will not exempt the entire property from taxation since the grantors remain the owners of a substantial interest in the property. Arts. 7146 and 7319, V. C. S.; City of Corpus Christi v. State, 155 S. W. (2d) 824.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By


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LPL/JCP

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL