



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

June 12, 1951

**Hon. Albert L. Bartley, Jr.
County Attorney
Fannin County
Bonham, Texas**

Opinion No. V-1187

Re: Fees of delinquent tax attorneys when taxes are paid after suit but before service of citation, answer, or other action in the suit.

Dear Mr. Bartley:

You request the opinion of this office upon two questions which we shall restate and answer in the order presented.

"Question No. One: Where the delinquent tax attorney files a suit for taxes against a taxpayer in which suit no citation is issued or service of citation is procured, no answer is filed, and no further action is taken by the said attorney, and the defendants therein subsequently remit the unpaid taxes to the tax collector, is the said attorney entitled to his contractual commission if the payment by the defendants was made after the contract between the county and the attorney had expired, but before six months of the following year had passed?"

"Question No. Two: In suits instituted by the delinquent tax attorney against delinquent taxpayers, is the said attorney entitled to his contractual compensation where he also was instrumental in filing the defendant's answer which claims the ten year statute of limitations?"

This office has heretofore answered your first question in Opinion No. 0-237 wherein the following question was asked:

"Question 4: Does the contractor have the right to a 13% commission on any recovery in the settlement of a tax suit after December 31, 1938?"

The following answer was given:

"Suits that are 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 the provision referred to above that provides for payment to the attorney of 13% of the amount collected applies without question to these cases.

"Our answer to your fourth question is that the contractor, the tax attorney, has the right to a 13% commission on a recovery in the settlement of a tax suit after December 31, 1938, provided the suit was filed by the tax attorney prior to December 31, 1938, during the term of the contract, and was settled within six months of December 31, 1938."

In view of the foregoing, we agree with your conclusion that the delinquent tax attorney in question is entitled to his contractual commission.

Your second question, at most, involves merely a question of legal ethics. It does not appear that there was any collusion or fraud practiced between the tax attorney and the defendants in the suits in which he prepared pleas of limitation on road district and school district taxes. They were filed by the taxpayers and not by him, and certainly the attorney's conduct in this respect is not such as to deprive him of the compensation which he would otherwise be entitled to receive under his contract. It is not the policy of the State to impose upon taxpayers unnecessary expenses in connection with the payment of their taxes, or to conceal from them legal defenses to the payment of the taxes accorded by statute.

Therefore, under the submitted facts, your second question is answered in the affirmative.

SUMMARY

A tax attorney collecting delinquent taxes under a contract made in accordance with the provisions of Articles 7335 and 7335a, V.C.S., is entitled to the compensation provided in the contract on suits filed before the expiration of the contract where the taxes are paid within the six months provided in the contract after its expiration to conclude suits previously filed, regardless of whether judgment is entered in the suits.

In the absence of collusion or fraud between the taxpayer and the delinquent tax attorney, the mere fact that the attorney prepares pleas of limitation to school district taxes and road district taxes for the defendant

Hon. Albert L. Bartley, Jr., Page 3 (V-1187)

taxpayers, which are filed by them, does not affect the right of the attorney to his commission on the other taxes collected.

Yours very truly,

PRICE DANIEL
Attorney General

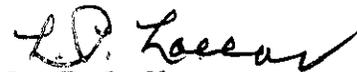
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