



PRICE DANIEL
ATTORNEY GENERAL

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

December 8, 1952

Hon. Riley Eugene Fletcher Opinion No. V-1543
County Attorney
Navarro County
Corsicana, Texas

Re: Authority of the Commissioners' Court, sitting as a Board of Equalization, to place a taxpayer's 1952 assessed valuation at a figure which will compensate for an erroneously high tax valuation in 1951.

Dear Mr. Fletcher:

You request the opinion of this office upon the question presented in a letter addressed to you which is in part as follows:

"The Tax Assessor and Collector of this county in computing the amount of State and County taxes due for the year 1951 on the rendition of the shares of the capital stock of [name of bank] made an error in arriving at the taxable valuation in that he did not use the same formula applied to other bank stock, which error resulted in an overpayment of around \$1200.00 to the State and County.

"The Commissioners Court wishes to rectify this error and desires that you submit the following question to the Attorney General:

"Does the Commissioners Court of Navarro County, sitting as a Board of Equalization, have the authority to deduct from the assessed valuation of taxpayer's property for the year 1952 the excess amount for which the property was erroneously valued for the year 1951, so as to permit the taxpayer to receive credit for the amount of overpayment of State and County taxes for the year 1951?"

The commissioners' court does not have any constitutional or statutory authority to credit an overpayment of taxes for one year against the taxes for a subsequent year. The court

is one of limited jurisdiction under the Constitution of this State. Section 18 of Article V of the Constitution provides that the court

" . . . shall exercise such powers and jurisdiction over all county business as is conferred by this Constitution and the laws of the State or as may be hereafter prescribed."

Under this constitutional provision it has been uniformly held that the commissioners' court possesses and exercises only such power as the Constitution itself or the Legislature, consistent with the Constitution, may confer upon it. Bland v. Orr, 90 Tex. 492, 39 S.W. 558 (1897); Slaughter v. Hardeman County, 139 S.W. 662 (Tex.Civ.App. 1911, error ref.); Landman v. State, 97 S.W.2d 264 (Tex.Civ.App. 1936). Galveston, H. & S.A. Ry. Co. v. Uvalde County, 167 S.W.2d 305 (Tex.Civ.App. 1942, error ref. w.o.m.), states the rule concisely in this language:

"The Commissioners' Court of a county has only such powers as are expressly or by necessary implication given it by the Constitution and statutes of this State. [Citing cases.] . . ."

A comparatively recent case by the Supreme Court, Canales v. Laughlin, 147 Tex. 169, 214 S.W. 451 (1948), has stated the same thing in the following language:

"The Constitution does not confer on the commissioners courts 'general authority over the county business' and such courts can exercise only such powers as the Constitution itself or the statutes have 'specifically conferred upon them'. See Mills County v. Lampasas County, 90 Tex. 603, 606, 40 S.W. 403, 404; Anderson v. Wood, 137 Tex. 201, 203, 152 S.W.2d 1084, 1085. While the commissioners courts have a broad discretion in exercising powers expressly conferred on them, nevertheless the legal basis for any action by any such court must be ultimately found in the Constitution or the statutes."

An examination of the Constitution and statutes reveals that no expressed power has been conferred upon the commissioners' court to credit overpayment of taxes against the taxes owing by the taxpayer for subsequent years nor does this power arise by necessary implication from any power expressly conferred. The answer to your question, therefore, is in the negative.

This does not mean, however, that the taxpayer is without a remedy. Since the overpayment of taxes for the year 1951 resulted from a clerical error which caused the taxpayer to pay upon a higher valuation than that actually fixed by the Board of Equalization, this error may be corrected by the commissioners' court to speak the truth and reflect the correct valuation which the court as a Board of Equalization in fact determined. The error does not invalidate the assessment. The taxes should have been paid upon the valuation actually fixed by the Board of Equalization. It is this actual valuation that constituted the real assessment and not the erroneous valuation. This is covered in Attorney General's Opinion V-485 (1948).

Since the taxes have actually been paid, we see no practical reason for correcting the error except to bring the assessment in line with the value upon which the taxes should have actually been paid. The taxpayer would be entitled to a refund of the excess paid over the true valuation fixed by the Board of Equalization. The commissioners' court would have the authority to order a refund of the county portion of the taxes. The Legislature would have the authority to make an appropriation to reimburse the bank for this overpayment of the State's part of the taxes for the reason that in our opinion under the facts submitted by you the overpayment resulted from a mistake of fact and not of law. The bank may present a claim to the next session of the Legislature.

SUMMARY

The commissioners' court does not have authority to authorize a credit against taxes owing for a subsequent year by reason of an overpayment in a prior year. As the overpayment resulted from a clerical error in entering the value upon the assessment rolls at a higher rate than fixed by the commissioners' court (Board of Equalization), the error may be corrected to reflect the real action of the court in fixing the value. The taxpayer is entitled to a refund from the county which may be ordered by the commissioners' court for the overpayment and the State's part of the taxes may be refunded

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by an appropriation by the Legislature.

APPROVED:

Yours very truly,

W. V. Geppert
Taxation Division

PRICE DANIEL
Attorney General

E. Jacobson
Executive Assistant

By 
L. P. Lollar
Assistant

Charles D. Mathews
First Assistant

LPL:mw