



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

August 19, 1953

Hon. F. L. Garrison  
County Attorney  
Upshur County  
Gilmer, Texas

Letter Opinion No. MS-86

Re: Liability of a common school  
district for taxes paid to it  
when land on which the taxes  
were paid lies in another school  
district.

Dear Mr. Garrison:

You have asked for the opinion of this office regarding the method by which a common school district may recover taxes on land situated within the district but which have been erroneously assessed and collected by another school district.

The jurisdiction of a school district to tax real estate is limited to the property lying within its boundaries. American Liberty Oil Co. v. State, 125 S.W.2d 1107 (Tex. Civ. App. 1939). Payment of a tax lawfully assessed by a school district may be made only to the district's collector of taxes. A payment made to any one else does not extinguish the obligation to the proper district.

Article 2795, Vernon's Civil Statutes, provides that the commissioners' court shall levy upon all taxable property within a common school district the rate of taxes voted by the district. Article 7346 authorizes the commissioners' court to assess real property which has been omitted from the tax rolls for past years. Whether the property involved in your inquiry was omitted from the rolls is not stated in your letter. In any event, the tax thereon is still owing and unpaid, and should be collected by the proper district, after being duly assessed.

The taxpayers who paid to the collector of the wrong district may recover the taxes thus paid. The payment of a tax through the mutual mistake of the taxpayer and the collecting district is not a voluntary payment that will estop its recovery. Frost v. Fowlerton Consolidated School District, 111 S.W.2d 754 (Tex. Civ. App. 1937); Att'y Gen. Ops. O-1266

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(1939); O-2083 (1940).

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By

Billy E. Lee  
Assistant

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