THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

December 16, 1954

Hon. Hulon C. Hall
County Attorney
Grimes County
Anderson, Texas

Opinion No. MS-164

Re: Disposition of delinquent State general ad valorem taxes levied for the year 1951 and subsequent years and collected after the year 1951.

Dear Mr. Hall:

Your letter requesting our opinion relative to the captioned matter reads as follows:

"At the request of the Tax Collector of Grimes County, Texas I have made some investigation of the relative rights of the State of Texas and The County of Grimes to certain delinquent taxes heretofore and hereinafter to be collected on the 30¢ ad valorem levy for State General Revenue purposes. As you know this levy has now been repealed by the above captioned statute and by Art. VIII Section 1-a of the State Constitution.

"I feel that it is unnecessary to go into the various facts of the so called 'Grimes County Case' which your office is most familiar with (74 S. Ct. 241, 346 U.S. 907). It seems sufficient to state that the Brazos River Authority, formerly the Brazos River Conservation and Reclamation District has now received its full grant out of the tax donation heretofore granted to it. Since that is true the only question is who is entitled to any delinquent taxes hereinafter collected for 1951 and subsequent years.

"It seems to me that Art. 7048 A, Sec. 2 and Sec. 4 makes it clear that any and all moneys not necessary to retire outstanding obligations shall be retained by the county or political subdivision which collects it. Since the obligation of the Brazos District has now

been retired and since there is no provision under the law that would entitle the State to funds collected under said levy after 1951 I am at a complete loss to comprehend why the State Comptroller has contended that his office is entitled to it."

Chapter 3, Acts 43rd Legislature, Fourth Called Session, 1934, as amended by Chapter 368, Acts 44th Legislature, First Called Session, 1935, donated and granted to the Brazos River Conservation and Reclamation District [now Brazos River Authority], a State agency, "all of the State ad valorem taxes collected for general revenue purposes upon the property and from persons in the following counties, to wit: Austin, Brazoria, Burleson, Fort Bend, Grimes, Waller, Washington, Brazos, Milam and Robertson; with certain limitations as to the amount donated, for a period of twenty years or for such portion of such period as may be required and commencing with the fiscal year beginning September 1, 1935."

Section 2 of the Act provided for reports at the end of each month by the assessor-collector of taxes showing "all moneys collected by him during said month."

Section 1-a of Article VIII of the Constitution of Texas, as amended in 1948, reads as follows:

"From and after January 1, 1951, no State ad valorem tax shall be levied upon any property within this State for general revenue purposes. From and after January 1, 1951, the several counties of the State are authorized to levy ad valorem taxes upon all property within their respective boundaries for county purposes, except the first Three Thousand Dollars ($3,000) value of residential homesteads, not to exceed thirty cents (30¢) on each One Hundred Dollars ($100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of this State, provided the revenue derived therefrom shall be used for construction and maintenance of Farm to Market Roads or for Flood Control, except as herein otherwise provided.

"Provided that in those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted, the State Automatic

> Tax Board shall continue to levy the full amount of the State ad valorem tax for the duration of such donation, or until all legal obligations heretofore authorized by the law granting such donation or donations shall have been fully discharged, whichever shall first occur; provided that if such donation to any such county or political subdivision is for less than the full amount of State ad valorem taxes so levied, the portion of such taxes remaining over and above such donation shall be retained by said county or subdivision."

Section 2 of Article 7048a, Vernon's Civil Statutes (Ch. 464, Acts 51st Leg., R.S., 1949, p. 849) is, for all practical purposes, an exact copy of said Section 1-a of Article VIII quoted next above.

You state in your opinion request that the Brazos River Conservation and Reclamation District has now received its full grant out of the tax donation heretofore granted to it. The State Automatic Tax Board levied the full amount of the State ad valorem tax for the years 1951, 1952 and 1953. As all legal obligations authorized by the law granting such donation was fully discharged in the year 1953, no State ad valorem tax for general revenue purposes will be levied subsequent to the 1953 levy.

The donation to the Brazos River Conservation and Reclamation District was in an amount less than the full amount of State ad valorem taxes levied, and clearly falls within the terms of the proviso of the constitutional amendment in question. This proviso was inserted in the constitutional amendment for the evident purpose of placing counties from which tax donations were made on the same basis as the other counties as far as possible without impairing the obligations of existing contracts.

It is therefore our opinion that all taxes collected by virtue of the State levy for general revenue purposes for the years 1951, 1952 and 1953 over and above the amount of the donation should be retained by the county.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
W. V. Geppert
Assistant

WVG:hp:lm