



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

See H-1235

WAGGONER CARR
ATTORNEY GENERAL

June 1, 1966

Honorable James E. Barlow
Criminal District Attorney
Bexar County
San Antonio, Texas

Opinion No. C-701

Re: Constitutionality of
Sections 1-3 of Article
7044a, Vernon's Civil
Statutes, in view of
Section 9 of Article
8 of the Texas Consti-
tution.

Dear Mr. Barlow:

By a recent letter to this office you have requested an opinion in regard to the above matter. We quote from your letter as follows:

"Our contention that art. 7044a, secs. 1-3 is unconstitutional is therefore based strictly upon the language of the constitution . . . I do not see how a commissioners court can levy an annual tax rate and then have that same tax rate in effect for an indeterminate number of years simply because it did not see fit to levy the annual tax rate before July 20th of each year.

"Also, . . . there is the question of impairment of contract as to the amount of the tax rate, in view of the fact that taxes levied to retire bond issues must be recalculated each year even though the original tax was levied at the time of the bond sale. . . ."

Article 7044a, Vernon's Civil Statutes, which became effective June 9, 1965, is quoted, in part, as follows:

"Section 1. From and after January 1, 1966, all taxing authorities which use the services of the county tax assessor-collector, either to assess or collect taxes for such taxing authority, shall, on or before July 20 of each year, notify the county tax assessor-collector whose services are to be used by the

taxing authority of the tax rate for the succeeding taxable year adopted by the taxing authority.

"Sec. 2. In the event any taxing authority . . . fails to notify the county tax assessor-collector of the tax rate adopted by the taxing authority, prior to July 20, . . . the tax rate for the succeeding year shall be the tax rate for the preceding year, . . . and in no event shall a new tax rate be in force and effect unless notification of such tax rate is furnished the county tax assessor-collector prior to July 20 of each year.

"Sec. 3. In compiling the tax roll for a taxing authority . . . the county tax assessor-collector shall use the rate furnished him by the taxing authority prior to July 20 of each year or in the event the county tax assessor-collector has not been furnished a new tax rate, the county tax assessor-collector shall use the tax rate adopted for the preceding taxable year by the taxing authority.

"Sec. 4. The fact that there is no deadline for various taxing authorities (other than the State of Texas) to adopt a tax rate, causing undue delay for the county tax assessor-collector"

Clearly, it was the intention of the Legislature, in enacting Article 7044a, Vernon's Civil Statutes, to require that all taxing authorities using the office of the county tax assessor-collector place their tax rate, to be used for the succeeding year, in the hands of the assessor-collector by July 20. The State Comptroller is presently required to notify the local assessors of its rate for State taxes by this date (July 20). Article 7042-7044, Vernon's Civil Statutes.

In many of the counties of this State, the county tax assessor-collector serves as assessor and collector for many different taxing authorities in addition to the county. The new statute, Article 7044a, applies to all of these taxing authorities. Attorney General's Opinion No. C-647 (1966).

Prior to the enactment of Article 7044a, Vernon's Civil Statutes, the time for setting the tax rate by the commissioners court was controlled by Article 7045, Vernon's Civil

Statutes, which is quoted as follows:

"The commissioners courts of the several counties, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the comptroller the said certificate and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls." (Emphasis added)

Under the above quoted article the counties had from the time that the tax roll was certified to the State Comptroller (July 15th) until the tax collector started his collecting (October 1st) to set the tax rate. Under the new article (7044a) the county must determine its rate and notify the tax assessor-collector by July 20th or the tax assessor-collector shall use the rate set by the county for the year before.

Without a doubt the Legislature may change the time for setting the county tax rate. "Subject to the limitation as to rate as prescribed in Section 9 of Article VIII, Vernon's Texas Constitution, the Legislature, under its general law making power, has the authority to regulate all matters pertaining to the levying and assessing of the annual ad valorem taxes, for general county purposes, and to prescribe the time for their payment." Stevenson v. Blake, 131 Tex. 103, 113 S.W.2d 525 (1938).

Section 9 of Article VIII, Vernon's Texas Constitution, is quoted, in part, as follows:

". . .and no county, city or town shall levy a tax rate in excess of Eighty Cents (80¢) on the One Hundred Dollars (\$100) valuation; . . .provided further that at the time the Commissioners Court meets to levy the annual tax rate for each county it shall levy whatever tax rate may be needed for the four (4) constitutional purposes; . . .Once the court has levied the annual tax rate, the same shall remain in force and effect during that taxable year; . . ."

No one would doubt that the above constitutional article does not prevent a commissioners court from using the same tax rate year after year if such rate is satisfactory to pay the county obligations. The Tax Assessor-Collector has no

authority to make a tax levy. The law requires the Commissioners Court to make a levy of the taxes in order for the taxes to be valid. If the Court does not, before July 20, set a tax rate, then the Tax Assessor-Collector uses the tax rate of the preceding year, and the Court would thereafter have to make a tax levy. Victory v. State, 138 Tex. 285, 158 S.W.2d 760 (1942); 54 Tex.Jur.2d, Sec. 42, page 169. Therefore, it is our opinion that Article 7044a is not unconstitutional as violating Section 9 of Article VIII, Vernon's Texas Constitution, due to the fact that the commissioners court must set its tax rate by July 20 of each year or use the rate adopted previously by the court.

Under the law prior to Article 7044a, Vernon's Civil Statutes, a recalculation of the tax rate necessary to retire bond issues was made within the time limit set down by the terms of Article 7045 (quoted above). All that Article 7044a would require is that the recalculation be taken into consideration prior to July 20 of each year. "Obligation of contracts is not impaired within meaning of the Constitution (Sec. 16 of Art. I, Vernon's Texas Constitution) unless the value of the contract has been lessened by the law complained of. Preston v. Anderson County Levee Improvement Dist. No. 2, 261 S.W. 1077 (Tex.Civ.App. 1924, error ref.). Therefore, it is our opinion that Article 7044a does not impair the obligation of contracts. Section 16 of Article I, Vernon's Texas Constitution.

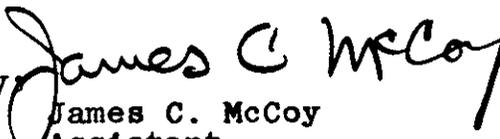
S U M M A R Y

Article 7044a, Vernon's Civil Statutes, is not unconstitutional as violating Section 9 of Article VIII, Vernon's Texas Constitution, due to the fact that the Commissioners Court must set its tax rate by July 20 of each year or use the tax rate previously adopted by the Court.

Article 7044a, Vernon's Civil Statutes, is not unconstitutional as impairing the obligation of contracts under Section 16 of Article I, Vernon's Texas Constitution.

Very truly yours,

WAGGONER CARR
Attorney General

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APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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