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Opinion Committee

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August 7, 1997

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The Honorable Dan Morales
Attorney General
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

RQ-971

FILE # MC-39715-97
I.D. # 39715

Dear General Morales,

I respectfully requested an opinion (*formal or letter opinion*) on the following questions:

Whether a succeeding tax collector must himself approve any tax collection contract executed before he/she takes office?

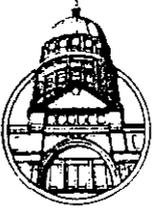
- If a tax collector does contract away collections under Tax Code section 6.24 (b) , is the tax collector required to register with the Board of Tax Professional Examiners under VTCA article 8885? If so, would the county be required to pay for educational courses that are required for certification?
- I have enclosed herewith, a brief on the above questions that Brazos County Tax Assessor-Collector Buddy Winn received from attorney David B. Brooks of Austin, whom he retains for legal advice.

Mr. Winn now seeks an opinion from your office and has made that request through my office.

Thank you in advance for your cooperation, I remain.

Respectfully,

James M. Kuboviak
County Attorney
Brazos County, Texas



david b. brooks
attorney

October 16, 1996

Gerald "Buddy" Winn
Brazos County Tax
Assessor/Collector
300 William Bryant Parkway
Bryan, TX 77803

Dear Buddy:

You have asked for my opinion regarding the interrelationship of the statutory schemes whereby county tax collectors are certified by the State, and also have the statutory authority to contract away tax collection. You have specifically asked whether a succeeding tax collector must himself approve any tax collection contracts executed before he took office. You have also specifically asked whether a county tax collector acquiescing in the contracting away of his tax collection duties, must nevertheless be certified by the Board of Tax Professional Examiners.

The Tax Code generally permits local governments, including the county, to enter into agreements for the collection of taxes for one another.

Chapter 6 of the Tax Code is entitled Local Administration:

CHAPTER 6. Local Administration
Subchapter A. Appraisal Districts
Subchapter B. Assessors and Collectors
Subchapter C. Appraisal Review Board

Subchapter B contains section 6.24, Contracts for Assessment and Collection:

(a) The governing body of a taxing unit other than a county may contract as provided by the Interlocal Cooperation Act with the governing body of another unit or with the board of directors of an appraisal district for the other unit for the district to perform duties relating to the assessment and collection of taxes.

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(b) The commissioners court with the approval of the county assessor-collector may contract as provided by the Interlocal Cooperation Act with the governing body of another taxing unit in the county or with the board of directors of the appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes for the county. If a county contracts to have its taxes assessed and collected by another taxing unit or by the appraisal district, the contract shall require the other unit or the district to assess and collect all taxes the county is required to assess and collect.

(c) [Contracts approved by State Property Tax Board-repealed 1983].

(d) [Delinquent tax attorney].

Thus, the county can contract only "with the approval of the county assessor-collector" pursuant to the Interlocal Cooperation Act, which merely grants further authority to local governments to enter into contracts for administrative function purposes, defined to include "tax assessment and collection." V.T.C.A., Government Code § 791.003(a). Neither the Tax Code nor the Government Code addresses directly the question of requiring the approval of a succeeding county tax collector. In my opinion, this approval would not be required nor would the new tax collector have the authority to disapprove an existing contract. I believe that the courts would construe this statutory mechanism to create contractual rights between one governing body and another properly acting through its officials in office at the time. City councils and other governing bodies often enter into contracts with others which remain valid contractual obligations after the city officials leave office. In short, a contract is a contract.

The Property Tax Professional Certification Act appears in Title 132, Occupations and Business Regulation, of the 1925 revision of the civil statutes as article 8885. This statute creates the Board of Tax Professional Examiners. Article 8885 also requires the certification of tax collectors. Section 11 dictates the persons required to register:

Sec. 11. The following persons shall register with the Board:

- (1) [appraisers]
- (2) the tax assessor-collector, tax collector, or

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other person designated by the governing body of a taxing unit as the chief administrator of the unit's assessment functions, collection functions or both; and other persons who perform the assessment or collections functions for the unit whom the chief administrator of the unit's tax office requires to register; and

(3) [appraisers]

The statute gives authority to the Board to adopt a classification system of registrants and minimum standards for certification. The statute does not address any special certification requires for county tax collectors whose taxing functions have been contracted away entirely.

The rules adopted by the Board of Tax Professional Examiners do, however, contain a provision regarding the certification of officials when taxes have been contracted away. These rules include:

Persons required to register or permitted to register shall be those required by law to register. Those required to register are:

- (1) [appraisers]
- (2) [appraisers]
- (3) [tax assessor-collectors]
 - (A) Designation of at least one individual to register.
 - (B) Registration of additional personnel.
 - (C) If a political subdivision which is empowered to levy a property tax has no official performing either assessment or collections functions because those types of functions are performed by another governmental unit(s), then no person in that political subdivision will be required to register. However, the chief administrator of that political subdivision shall provide the Board with a copy of the contract(s) which indicate that the political subdivision has no official who is responsible for assessment or collections functions.

22 Tex. Adm. Code § 623.3.

I believe that this rule is a valid exercise of the Board's rulemaking authority as to classification systems and requirements for certification. In my opinion, I do not think that Texas courts would determine that this rule not requiring certification for tax

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collectors whose taxes have been contracted away is an improper exercise of the Board's rulemaking discretion.

A brief, unofficial letter opinion from the attorney general's office, dated September 25, 1995, advises the Executive Director of the Board of Tax Professional Examiners that in the author's opinion, a county tax assessor-collector is not exempt from registration when the county has contracted away tax functions. This letter opinion did not address the validity of the above quoted rule. The letter opinion relied on Op. Tex. Att'y Gen. No. JM-1020 (1989), which concluded that persons making tax rate calculations must register with the Board, and that in any event the tax collector must register whether he performs these calculations or not. Opinion JM-1020 itself relied on an earlier opinion, Op. Tex. Att'y Gen. No. H-1120 (1978) generally concluding that the statutory registration of county tax collectors did not unconstitutionally impose a qualification on the office. Neither opinion JM-1020 nor H-1120 addressed certification requirements when taxes have been contracted away.

The attorney general construed section 6.24 in 1987. Op. Tex. Att'y Gen. No. JM-833 (1987). This opinion discussed the constitutional duty of the county tax assessor-collector to perform "all duties" relating to tax collection as prescribed by the legislature. Vernon's Ann. Tex. Const. art. VIII, § 14. The attorney general considered this statutory provision for contracting away taxes to be merely providing assistance to the county assessor-collector rather than supplanting his duties entirely. The attorney general wrote:

We cannot assign to the legislative act an intent to authorize the assessor-collector, by his "approval," to divest himself of power, authority, and responsibility invested in him by the Constitution--something the Legislature itself could not do.

This opinion also, on constitutional grounds again, concluded that section 6.26 of the Tax Code permitting voter approval of tax collection duties unconstitutionally infringed upon the responsibility of the county tax assessor-collector.

Attorney General Opinion JM-833 calls into question entirely section 6.24(b) permitting counties to contract away, with approval of the county tax collector, these functions. On the other hand, one could assert that JM-833 misconstrued the constitutional duties of a county tax collector who is charged with the performance of "all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the

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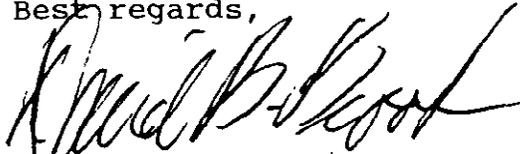
Legislature." [emphasis added] The attorney general interpreted this provision as requiring that "all" tax assessment and collection functions must be performed by the county tax assessor and collector.

In 1971, the attorney general advised the county attorney of Potter County that the County could not contract with the city for the collection of county taxes. The attorney general considered this to be an "abrogation of the duties of the county tax assessor-collector." Op. Tex. Att'y Gen. No. M-986 (1971).

In another opinion which predates appraisal districts, the attorney general had ruled that the Legislature could not establish regional appraisal offices without violating the assessment duties constitutionally imposed on the county tax collector. Op. Tex. Att'y Gen. No. LA-117 (1976).

In my opinion, given the initial approval authority of the county tax collector, a tax collection related power prescribed by the Legislature, section 6.24(b) would be construed as a constitutional enactment. See, Missouri, K. & T. Ry. Co. of Texas v. Shannon, 100 S.W. 138 (Tex. 1907).

Best regards,



David B. Brooks