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January 16, 1939

Mr. Warren McDonald
County Attorney
Smith County
Tyler, Texas

Dear Mr. McDonald:

Opinion No. C-103
Re: Authority of Tax Collector to accept payment of delinquent taxes without payment of school and road taxes that were delinquent ten years prior to the date tax suit was filed.

Your request for an opinion on the following question has been received by this office.

We quote your letter as follows:

"In a county where there is a delinquent contract in process, and tax suits are filed, does a County Tax Collector, who is the collector for common and independent school districts have the authority to accept the payment of delinquent taxes without the payment of school and road taxes that are delinquent ten years prior to the date the suit was filed?"

In reply to your question you are respectfully advised that it is our opinion where a tax contract is in process and tax suits are filed, a collector may accept the payment of delinquent taxes without the payment of school and road taxes that are delinquent ten years prior to the date the suit was filed. However, a tax collector could not give the tax payer a clear receipt, or a statement that all taxes had been paid.

Mr. Warren McDonald, January 18, 1939, Page 2.

The receipt would merely show the amount of taxes paid and the years for which paid, and the school and road tax would still be due and unpaid.

Article 7298, Revised Civil Statute provides in part as follows:

" provided, that no suit shall be brought for the collection of delinquent taxes of a School District or Road District unless instituted within ten years from the time the same shall become delinquent."

It is our opinion that this provision in Article 7298 is a ten year statute of limitation on collection of delinquent taxes due a school district or a road district. In order to take advantage of the limitation period the tax payer would have to specially plead and set up his rights under this ten year statute. In the absence of such special pleading by the tax payer, the attorney bringing the tax suit, could take judgment for the school and road tax, delinquent ten years prior to the date the suit was filed even though the other taxes had been paid.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By  Assistant

COB:GFS

APPROVED:

ATTORNEY GENERAL OF TEXAS *mjh*

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