



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-844
Re: Whether the State should have paid costs of assessing property in precincts Nos. 1, 2 and 4, Matagorda County, during the operation of Senate Bill No. 54, Second Called Session, 38th Legislature.

In your letter of November 9, 1939, you direct our attention to Senate Bill No. 54, chapter 4E, page 102, Second Called Session, 38th Legislature, and request our opinion as to what part of the assessment fees in Matagorda County the State should have paid during the existence of such act. Said Senate Bill No. 54 reads in part:

Section 1. That because of great public calamities occurring in the counties of Matagorda and Wharton and seriously threatening the total destruction of the towns of Matagorda, Bay City and Wharton, and the devastation of the greater part of the agricultural lands of said districts, above defined, the inhabitants of and property in said districts, in accordance with Section 10 of Article VIII of the State Constitution shall be, and are hereby released for a period of twenty-five (25) years as hereinafter provided, from the payment of taxes levied for State purposes in said two districts as follows:

"1. All of the State ad valorem

taxes levied for State purposes against the inhabitants and property in commissioners precincts Nos. one, two and four of Matagorda County and in all of Wharton County, including the rolling stock belonging to railroad companies, which shall be ascertained and apportioned as provided by law.

"Sec. 3. The tax assessors of said county of Matagorda and said county of Wharton, shall each, respectively, assess for taxation the property and persons, firms, companies and associations of persons in their respective districts above defined in the usual manner as required by law, and the tax collectors of each of said counties shall, or shall not, collect the said State taxes, in said districts, as he may be ordered and directed to do by the Comptroller of Public Accounts as hereinafter provided."

The act also provided that such relief should be conditioned upon the voters' residing in the affected precincts, voting an issue of bonds at least equal to the amount of taxes released. It is our understanding that the bonds were voted.

Senate Bill No. 281, chapter 162, Regular Session, 38th Legislature, was very similar to said Senate Bill No. 54, except that said Senate Bill No. 281 released the inhabitants and property in the county of Hidalgo from the payment of State ad valorem taxes for a period of 25 years, such release covering the whole of Hidalgo County instead of only three precincts as was the case of the Matagorda County release. In the case of Sheppard v. Hidalgo County, 83 S. W. (2d) 649, the Supreme Court, in an opinion by Judge German, Commissioner, held that said Senate Bill No. 281, the Hidalgo County release, was void; however, House Bill No. 101, chapter 401, page 1594, First and Second Called Sessions, 44th Legislature, apparently removed the questions resulting in such holding, and on motion for rehearing the Supreme Court, calling attention

Honorable Geo. H. Sheppard, page 3

to said House Bill No. 101, in 90 S. W. (2d) 811, withdrew its said former opinion. The 44th Legislature, in House Bill No. 114, chapter 402, page 1598, First and Second Called Sessions, 44th Legislature, made an amended grant of the State ad valorem taxes collected in precincts Nos. 1, 2 and 4 for the purpose of removing the questions thus raised by the Supreme Court in its opinion in 83 S. W. (2d) 649. We shall assume, however, that said Senate Bill No. 54 was constitutional.

In our opinion No. 0-287, addressed to Honorable George H. Sheppard, Comptroller of Public Accounts, we held that the State was not due to pay any of the assessment fees accruing in Hidalgo County during the period that said Senate Bill No. 281 was in force, except the pro rata amounts due by the pension and school funds. However, in that opinion we called attention to Article 3938, Revised Civil Statutes, providing that:

"The Comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the State for assessing the State taxes to be paid out of the first money collected for that year,"

and pointed out that since all of the State ad valorem taxes levied for State purposes in that county had been released, there was no fund such as that contemplated by said Article 3938, out of which the assessment fees ordinarily paid by the State could be drawn, unless it should be said that all of such commissions should be paid out of the school fund or pension fund. Since the school and pension funds are expressly provided by Constitution (Article VIII, section 9, and Article III, section 21) we did not believe that it was contemplated that the share of the assessment costs ordinarily paid out of the taxes collected for the State's general fund, should be met by withdrawals from the school and pension funds. However, in the case of Matagorda County, the state ad valorem taxes were not released in precinct No. 3; hence, there was a fund out of which the State's share of the assessment costs could be paid as provided by said Article 3938. In view of such fact, we do not believe it can be said that it was contemplated that the county fund should bear any more than its usual share of the assessment costs. The county funds received no accretions by reason of the release of the inhabitants and

Honorable Geo. H. Sheppard, page 4

property in precincts Nos. 1, 2 and 4 from the payment of the State ad valorem taxes.

Our answer to your question, therefore, is that the State should have paid the same part of the assessment fees as it would have paid if Senate Bill No. 54 had never been enacted.

Yours very truly

ATTORNEY GENERAL OF TEXAS

(signed)

By

Glenn R. Lewis
Assistant

GR:LW

APPROVED: December 13, 1939

Gerald C. Mann (signed)
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY B. W. B.
CHAIRMAN