



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

~~Attorney General~~
~~1940~~

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

0-2818

Dear Sir:

Opinion No. 0-2818
Re: Authority of Commissioners' Court to make a delinquent tax contract beginning January 1, 1941, there being only one change in the personnel of the Commissioners' Court.

In your letter of October 10, 1940, you submit to us the following facts: The contract between Erath County and certain attorneys for the collection of delinquent taxes ends on December 31, 1940, and the parties desire at this time to enter into another such contract beginning on January 1, 1941. The incumbent county attorney, county judge and three county commissioners have been re-nominated and will doubtless be re-elected at the coming general election, but one of the commissioners will not succeed himself. It is proposed to obtain a ratification or approval of the contract by the man who has been nominated by the Democratic party to succeed the out-going commissioner. You request our opinion as to whether or not such contract may be properly and legally entered into by the County.

We have heretofore pointed out that these contracts evidence an employment of a very personal and confidential nature and have expressed the view that they cannot be made to extend beyond the term of office of the commissioners' court making the contract. Opinions Nos. 0-289 and 0-257. There is no need to repeat our reasons for the holding, as you have copies of these opinions. We adhere to that holding in this case. The Democratic nominee to the office held by the commissioner who will not succeed himself is not yet an officer and will not be until he qualifies and takes over at the end of the year. Clearly he cannot now estop himself or legally bind himself now by contract as to his future official duties. If, after qualification, he should see good

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reasons for not making this contract it would be his duty to vote against it and give the other members of the commissioners' court the benefit of such reasons, which might result in a refusal to enter into the contract. He must be free to act after he is inducted into office. We therefore answer your question in the negative. We note the attached letter of one of the attorneys mentioning the hiatus between the expiration of the present contract and the effective date of the one to be made next year. Under our view of the question, there will necessarily be a period of time during which no contract will be in effect, but feel that it can be held to a very few days upon prompt action of the commissioners' court, the interested attorneys, the Comptroller's and Attorney General's Departments.

Your letter indicates that you would like for us also to express ourselves as to the legality of such contracts made by counties in which all members of the commissioners' court, including the county judge, and the county attorney have been re-elected. Where this is true, the reasons which forbid the making of such extended contracts have substantially failed, and in such cases we will approve contracts extending beyond the incumbent officers' terms, if there are no other objections. On this point we cite *Cameron vs. Earnest*, 34 S. W. (2) 685. It will be kept in mind, however, that this cannot be done until re-election is had at the general election in November.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

GRL:db

APPROVED OCT 22, 1940

George H. Sheppard
ATTORNEY GENERAL OF TEXAS

