



**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. 0-3460  
Re: Status of Delinquent  
State and County taxes  
where no answer was  
filed by the State and  
the County in a tax  
suit brought by a city  
and in which the State  
and County were impleaded  
as parties defendant.

In your letter of April 28, 1941, you submit  
the following facts:

"The City of Crosbyton entered suit against  
a number of individuals for delinquent taxes;  
the County Tax Assessor-Collector was served  
with a citation along with the School District  
and lienholders on the property but the Attorney  
representing the State and County did not inter-  
vene in the suit; judgment was taken and the  
property was sold but the State and County did  
not participate in the proceeds of the sale."

and you request our opinion in response to these questions:

"What is the status of the State and County  
taxes? If such State and County taxes are for-  
ever barred what procedure should be taken to  
clear the tax rolls? If such taxes are not barred  
what should be done to collect the taxes shown on  
the tax roll?"

We have been furnished with a copy of the judgment  
referred to and it is dated October 12, 1938. It is therein

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recited that the defendants were not indebted to the impleaded party defendant, the State of Texas, and the last paragraph of the judgment reads as follows:

"And it is further ordered, adjudged and decreed by the Court that the purchaser of property sold for taxes herein shall take title free and clear of all liens and claims of taxes against such property delinquent at the time of judgment in this suit to any taxing unit which was a party herein or which has been served with citation as required by this Act."

Article 7345b, Vernon's Annotated Civil Statutes, providing a method of procedure for the foreclosure of delinquent taxes and under which this action apparently was brought contains Section 10, reading as follows:

"The purchaser of property sold for taxes in such foreclosure suit shall take title free and clear of all liens and claims for taxes against such property delinquent at the time of judgment in said suit to any taxing unit which was a party to said suit or which had been served with citation in said suit as required by this Act."

From the opinion of Judge Hickman in the case of Mexia Independent School Dist. vs. City of Mexia, 133 S. W. (2d) 118, we quote as follows:

"In this connection, it is not contended that the statute under consideration undertakes directly to release any taxes to any one but it is contended in effect that since the Act authorizes the plaintiff to join as defendants all other taxing units having liens against the property and further provides that the purchaser of the property sold at such foreclosure sale shall take title thereto free of all liens for taxes owing the taxing units that were parties to the suit, it is possible for the representatives of a taxing unit by failing to appear and file claim

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for the taxes due to thereby waive and release to the property owner the lien for such taxes. We recognize that it is possible, under the Act in question, for such representatives, by their carelessness or otherwise, to fail to properly foreclose the liens held by the taxing units which they represent, but this is a danger inherent in all governmental functions performed by human agents. It has always been possible for commissioners' courts by failing to assess property at its full value, or for attorneys by failing to properly prove up their cases in tax suits, or for jurors by improperly resolving questions of fact in favor of the tax debtor, to thereby deprive a taxing unit of its just dues, but the mere existence of this possibility does not render all our tax laws unconstitutional. It is presumed that all public officials will honestly perform their official duties, *Anderson v. Polk*, 117 Tex. 73, 297 S. W. 219, and the statute and constitutional provisions in question must be construed in the light of that presumption. When so construed, the statute is not unconstitutional on the grounds stated."

If a proper citation was duly served upon the county tax collector as provided in the first paragraph of Section 2 of said Article 7345b and if all the proceedings in the case were regular it is our opinion that the State of Texas and County of Crosby were precluded from maintaining any suit for the collection of any taxes against the property described in the judgment which were delinquent at the time such judgment was taken. However, if no citation was served, the state being notified simply by registered mail in the manner suggested in the second paragraph of Section 2, the action of the State and County for such taxes would not be barred. We believe the above sufficiently answers your first question. Your Mr. Farrar has today advised us that you will not need any expression from us in reply to your second and third questions.

APPROVED MAY 14, 1941

*George H. Sheppard*

FIRST ASSISTANT  
ATTORNEY GENERAL

GRL:lh

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*

Glenn R. Lewis  
Assistant

