



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Peyton Burke
County Auditor
Falls County
Marlin, Texas

Dear Sir:

Opinion No. 0-5739

Re: Can the county auditor of Falls County legally approve the claim of the C.O. Leuschner Estate for a refund of the taxes paid by said estate to Falls County for the years 1914 through 1929?

This is in reply to your request for opinion. Your said request is contained in two letters.

In your first letter you say as follows:

"On December 1, 1913 Mr. Otto Kunkel purchased from the C. O. Leuschner Estate 46½ acres of land. For the years 1914 through 1929 this land was rendered for taxation, to Falls County, by the C. O. Leuschner Estate and also by Mr. Otto Kunkel.

"The C. O. Leuschner Estate has filed a claim with Falls County for refund of taxes paid by said estate for the years 1914 through 1929.

"Can I, as County Auditor of Falls County, Texas, legally approve the claim of the C. O. Leuschner Estate for a refund of the taxes paid by said estate to Falls County for the years 1914 through 1929?"

In your second letter you further say:

"I am informed that after the sale of the property to Mr. Otto Kunkel by the Leuschner Estate, Mrs. Leuschner, widow of C. O. Leuschner, began to handle the affairs of the estate. Mrs. Leuschner continued to render, by mistake, the tract of land that had been sold to Mr. Kunkel and paid the taxes,

when due, throughout the years. Mr. Kunkel, the owner of the land, also rendered same for taxes and paid same when due.

"In other words, Mrs. Leuschner rendered this property for taxation by mistake and paid the taxes, when due, by mistake."

The taxes paid by the taxpayer, which have gone to the State, or which are held by the collector for the State, may not be rebated or repaid to the taxpayer by the tax collector under any circumstances. Article VIII, Section 6, of the Constitution of Texas declares:

"No money shall be drawn from the treasury but in pursuance of a specific appropriation made by law."

With reference to the taxes due the County and paid by the taxpayer under the mistaken belief that she owned the property on which the taxes were paid, our understanding of the law as laid down by the Supreme Court of Texas in the case of City of Houston v. Feizer, 13 S.W. 266, may be briefly stated as follows:

Taxes paid to a county by a taxpayer who acts under a mistake of fact which does not arise in connection with his own negligence may be paid back by the county.

Mistake of fact can scarcely exist in connection with negligence; as illegalities which render such a demand a nullity must appear from the records, and the taxpayer is just as much bound to inform himself what the records show or do not show as are the public authorities.

Your request for opinion does not disclose any fact or facts which would make the taxpayer's ignorance of her ownership of the property such a mistake of fact as would excuse her from knowing she did not own the property at the time she paid the taxes thereon.

Of course, if she joined in the deed of conveyance by which the property was divested out of her estate, or if the deed by which the grantee held the land was placed of

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record, her lack of knowledge, if any, of the fact that she did not own the land when she paid the taxes on same was attributable to her own negligence.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By /s/ George P. Blackburn
Assistant

GFB:AMM:RT

APPROVED
Opinion Committee
By: /s/ A.W.
Chairman

APPROVED: JAN. 28, 1944

/s/ GROVER SELLERS
ATTORNEY GENERAL OF TEXAS