



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**GROVER SELLERS
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ATTORNEY GENERAL**

Honorable Max W. Boyer
County Attorney
Ochiltree County
Perryton, Texas

Dear Sir:

Opinion No. 0-6543
Re: Whether tax collector of independent school district is entitled under Article 2791, V.A.T.C.S., to a percentage of penalties and interest collected on delinquent taxes or whether his commission is limited to a percentage on the amount of taxes assessed and collected.

Your request for opinion has been received and carefully considered. We quote from your request as follows:

"I submit to you the following proposition for official opinion.

"Construing Article 2791, Vernon's Annotated Civil Statutes, with reference to compensation of an independent school district assessor and collector, what is meant by the provision, 'whole amount of taxes' in line 7 of said Article?

"An independent school district has asked me to advise them whether or not the tax collector for the district is entitled to a percentage of the penalty and interest collected upon delinquent taxes, or is his compensation confined to the actual amount of taxes assessed and levied?

"I, therefore, desire that you give me your opinion upon this question at your very earliest convenience."

Article 2791, Vernon's Annotated Texas Civil Statutes, reads as follows:

"The district tax assessor and collector shall have the same power and shall perform the same duties with reference to the assessment and

collection of taxes for free school purposes that are conferred by law upon the city marshal of incorporated towns or villages, and he shall receive such compensation for his services as the board of trustees may allow, except in cities and towns provided for, not to exceed four per cent of the whole amount of taxes received by him. He shall give bond in double the estimated amount of taxes coming annually into his hands, payable to and to be approved by the president of the board, conditioned for the faithful discharge of his duties and that he will pay over to the treasurer of the board all funds coming into his hands by virtue of his office as such assessor and collector; provided that in the enforced collection of taxes the board of trustees shall perform the duties which devolve in such cases upon the city council of an incorporated city or town, the president of the Board of Trustees shall perform the duties which devolve in such cases upon the mayor of an incorporated city or town, and the county attorney of the county in which the independent school district is located shall perform the duties which in such cases devolve upon the city attorney of an incorporated city or town under the provisions of law applicable thereto. It shall be within the discretion of the board of trustees of an independent school district to name an assessor of taxes who shall assess the taxable property within the limits of the independent school district within the time and in the manner provided by existing laws, in so far as they are applicable, and when said assessment has been equalized by a board of equalization appointed by the board of trustees for that purpose, shall prepare the tax rolls of said district and shall duly sign and certify same to the county tax collector as provided for in the succeeding article. The said assessor of taxes shall receive a fee of two per cent of the whole amount of taxes assessed by him as shown by the completed certified tax rolls. Acts 1905, p. 263; Acts 1923, 2nd C.S. p. 78." (Underscoring ours)

Article 7336, Vernon's Annotated Texas Civil Statutes, provides penalties for the non-payment of taxes when due. This statute is lengthy and will not be quoted here.

Also, the Legislature has enacted many statutes with reference to the remission of penalties and interest on delinquent taxes.

The case of Morrison v. Lane, 157 S.W. (2) 466, involved the construction of a contract between a Commissioners' Court and an attorney whereby said attorney agreed to collect delinquent taxes, penalties and interest. After the execution of the contract the Legislature enacted an Article (7336i) releasing penalties and interest. It was contended that said attorney could not be paid his commission from any portion of the taxes collected but could only be paid from penalties and interest collected. The Court construed the contract, and Articles 7264a, 7335, 7335a and 7336i and held that the attorney was entitled to collect his commissions from the taxes as well as from penalty and interest. The Court in this case clearly recognized the differences between and separability of taxes, penalties and interest. We call attention to the following language in the court's opinion, to wit:

"It is our conclusion that the lower court correctly construed the delinquent tax statutes under which the contract in issue was made. Article 7335 authorized a contract 'for a per cent of the taxes, penalty and interest actually collected.' Since the interest and penalty were remitted, only the taxes remained from which appellee could be paid. Again, Article 7335 expressly provided that the payment to appellee should be contingent upon the collection of such taxes, penalty and interest. Appellee has collected taxes in the amount stated above. His contract authorized payment to be made to him from the taxes 'actually collected.' (Note--The above emphasis was made by the court in its opinion.).

Answering your inquiry it is our opinion that the provision "whole amount of taxes" in Article 2791, V.A.T.C.S., referred to by you, only includes taxes and does not include penalty and interest.

It, therefore, follows that a tax collector of an independent school district is not entitled to a percentage of penalties and interest collected upon delinquent taxes. Such tax assessor-collector would be, of course, entitled to collect such percentage as was allowed him, not to exceed 4 per cent of the whole amount of taxes received by him. He is also entitled to a fee of two per cent of the whole amount of taxes assessed by him as shown by the completed certified tax rolls.

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By: s/Wm. J. Fanning
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WJF:BT:wc

APPROVED MAY 3, 1945
s/Carlos C. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman