OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

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ATTORNEY GENERAL

Affirms
O-6257

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

Dear Sir: Opinion No. O-7412

Re: Whether the Commissioners Court of Montgomery County has the authority to enter the order dated September 16, 1946? Is the tax collector of said county authorized to act as directed in said order?

You have requested the opinion of this department upon the captioned questions. The occasion giving rise to your request, as we understand it, is that in 1945, the Commissioners Court of Montgomery County, sitting as a Board of Equalization, fixed the assessed valuation of all minerals located in the county at thirty-four and four-tenths per cent of the one hundred per cent value in comparison to the assessed valuations of minerals in previous years of approximately twenty-five per cent of one hundred per cent valuation. In 1946, several protests were made to the Commissioners Court that this 1945 basis for determining the assessed valuation of these minerals was excessive in comparison to other assessments. After an investigation into the matter, the Commissioners Court on September 16, 1946, entered the order in question, a portion of which order reads as follows:

> "The protests, objections and applications for relief of various persons, firms and corporations owning oil, gas and mineral interests in land in Montgomery County, Texas, against alleged discriminatory assessments made by this Board for the year 1945 claimed to have resulted from following an illegal plan of assessment having been

further considered and the Board having heard and weighed the evidence and testimony of numerous witnesses regarding values, and having heard and considered fully the reports, evidence and testimony of its appraisal experts, Pritchard & Abbott, and their employees, and being fully informed in the matter, finds and concludes that the oil, gas and mineral interests in land in Montgomery County, Texas, were assessed for taxation for the year 1945 at a valuation greater than that placed upon other property in Montgomery County, Texas, of similar value, and out of proportion to the taxable value of such property, and the agents of numerous persons, firms and corporations owning mineral interests or oil and gas interests in land in Montgomery County, Texas, having appeared before this Court, sitting as a Board of Equalization, and applied for relief and having renewed their protests against the assessments made by this Board for the year 1945, and the Court having heard the testimony of competent and disinterested witnesses, and having made such personal and independent investigation as it deems necessary and expedient, and having found after full investigation that the assessments of such property for the year 1945 were discriminatory and out of proportion to the taxable value of such oil and gas property and mineral interests in land and that the enforced or attempted collection of the accumulated delinquent taxes, penalty, interest and costs on such assessments for the year 1945 would be inequitable and confiscatory, and it appearing that this Board erroneously determined heretofore to assess such properties on a basis of thirty-four and four-tenths per cent of the one hundred per cent valuation shown in the report of Pritchard & Abbott on file with the Court, and that the percentage of the one hundred per cent valuation found by Pritchard & Abbott ought to be reduced to 29.4, Twenty-nine and four-tenths per cent of such values for the year 1945, it is therefore accordingly ordered,

adjudged and decreed that the assessments for the year 1945 shall be on a basis of 29.4 per cent of the one hundred per cent valuation shown by Pritchard & Abbott in their 1945 report, the adjustment as to the assessed values of mineral and mineral interests being necessary in the judgment of this Board in order to make such assessments equitable and just.

"The Clerk of this Court shall furnish to Honorable George H. Sheppard, State Comptroller, a certified copy hereof to the Assessor and Collector of Taxes of this County, who shall make the necessary corrections on his rolls and receive payment of taxes for the year 1945 on the basis above fixed, the interest and penalties to be calculated on such adjusted assessments, as provided by law."

You have requested us to advise whether this is a valid order and whether the Commissioners Court has the authority to find and determine as it did in this order; also, whether the tax collector is authorized to act as directed in said order.

Apparently the Commissioners Court of Montgomery County was basing its authority to enter such order as above quoted upon Article 7345d, V.A.C.S. We say this for the reason that the Commissioners Court in drafting the order followed the procedure prescribed in this statute and likewise found what the assessed value should be in lieu of what was previously determined by the court to be the correct value at which taxes should be collected. This department in Opinion No. O-930 held that Article 7345d was unconstitutional. This holding was re-affirmed in Opinion No. O-6257. Since you are familiar with these opinions we have not enclosed copies of them.

As was pointed out in Opinion No. O-6257, if assessments are void, the property involved should be reassessed at a corrected value. The idea being that a void assessment is a nullity, and the property involved would be in a status of not having been assessed at all and that it would be necessary that the property be assessed so

taxes could be collected thereon.

The only way, therefore, that the minerals in question can be assessed at a different value than that found in 1945 is upon the ground that the 1945 assessments are void. Whether these assessments are void is not before us and we render no opinion thereon. If the assessments involved are void, the procedure to be followed is that prescribed in Articles 7346 and 7347, V.A.C.S. These articles in effect provide that whenever the commissioners court shall find that any previous assessments on any real property are invalid, a list of such properties should be prepared and given to the tax assessor who proceeds at once to make the assessments. This is then submitted to the commissioners court, who passes on the values fixed by the assessor.

If by the order in question the Commissioners Court is attempting to re-assess the minerals in accordance with Article 7345d, then it is acting clearly beyond its authority. If the Commissioners Court is finding that 1945 assessments on the minerals are void, then it does not have the authority as it attempted to do in the order under consideration, to instruct the tax assessor as to what the re-assessed value of these minerals should be. It is the tax assessor's duty to re-assess these minerals, if the 1945 assessment is void, and for the commissioners court to pass on the valuations fixed by him. The tax assessor may assess the minerals at a value equal to twenty-nine and four-tenths of their one hundred per cent value if he deems this to be the correct assessed valuation, but he does this on his own initiative and not from any instructions from the Commissioners Court.

It has been suggested that since the court in the case of Lively, et al v. M. K. & T. Railway Company, 120 S. W. 852, re-assessed some property where only mathematical computations were necessary, that the commissioners court in the present situation could do likewise. In the Lively case, all of the property was assessed at 66 2/3 per cent of its market value except one parcel which was assessed at its full value. The court re-assessed this parcel at 66 2/3 of its value to meet the standard use in the assessment of the

other properties. Such is not the condition that exists in the Montgomery situation; no property is being reduced to meet a standard used in finding the assessed valuation of like property; no property is being reduced to meet the standards used in determining the assessed valuation of any kind of property. A new assessment is being made and where such is the case, the courts recognize that the principle laid down in the Lively case has no application. Electra Independent School District v. W. T. Waggoner Estate, 140 Tex. 483, 168 S. W. 2d 645.

We trust the foregoing answers your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED OCT 8, 1946

ATTORNEY GENERAL OF TEXAS

By Robert O. Koch
Robert O. Koch
Assistant

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APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN