



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

November 6, 1947

Hon. Stuart B. Lumpkins
County Attorney
Ellis County
Waxahachie, Texas

Opinion No. V-424

Re: Effective period of
a reallocation and
change of the ad
valorem tax rate of
Ellis County which
was voted August 23,
1947.

Dear Mr. Lumpkins:

Your recent request for an opinion of this
Department is substantially as follows:

"On August 23, 1947, the voters of
Ellis County approved a re-allocation and
change in the county ad valorem tax rate,
under Texas Constitution, Art. 8, Sec. 9,
from a 50¢ rate, divided 25¢ to the Road
and Bridge Fund and 25¢ to the General
Fund; to an 80¢ rate, divided 50¢ to the
Road and Bridge Fund, 25¢ to the General
Fund, 3¢ to the Permanent Improvement
Fund, and 2¢ to the Jury Fund. The vote
at such election was officially canvassed
on August 26, 1947. The County ad valorem
tax rate of 50¢ for 1947 was given to the
County Tax Assessor-Collector on August 15,
1947, and the tax rolls had been made out
by him prior to August 26, before the re-
sult of the vote could be known. After the
result of the vote was known, there did not
remain enough time before collections began
on October 1, 1947, to remake the rolls and
issue statements under the new 80¢ rate.
The result was that the re-allocation and
change in the tax rate was not in effect
for 1947. . . .

"QUESTION: Will such re-allocation
and change for Ellis County expire six years
from the election date, that is, on August
26, 1953, so that the last collection there-
under may be made beginning in Oct., 1952,
thereby making the 80¢ rate apply only for

5 years; or will the change be in force and effect for six succeeding years from the election, so that collections may be made for the sixth year beginning in October, 1953, under the 80¢ rate?"

Section 9 of Article VIII of the Constitution of Texas, as amended, provides the authority for a re-allocation of constitutional taxes after a majority of the qualified property tax paying voters of a county have favored the same. Further, it is provided that "such re-allocations and changes shall remain in force and effect for a period of six (6) years from the date of the election at which the same shall be approved, unless the same again shall have been changed by a majority vote of the qualified property tax paying voters of such county, voting on the proposition, after submission by the Commissioners' Court at a general or special election for that purpose." It necessarily follows that for a period of six years from the date of the election the constitutional tax limits are those voted upon unless changed by a majority vote of the qualified property tax paying voters of Ellis County.

Inasmuch as the election for reallocation and change in the ad valorem tax rate was held on August 23, 1947, the question for determination is whether Ellis County may assess taxes on January 1, 1953, and collect the same in October, 1953, pursuant to such election or must the collection in October, 1953, be limited to the old constitutional rate. Your factual situation reflects that the six year period will run from August 23, 1947, to August 22, 1953.

In the case of *Humble Oil & Refining Co. v. State*, 3 S.W. (2d) 559, the Court stated:

"Article 7151 of the Revised Statutes provides, in effect, that all property shall be assessed against the person who owned same on January 1st in the year for which same is rendered, and our courts have uniformly held that the person who owns property on the 1st of January is personally liable for the taxes for said year, although same may be sold shortly thereafter. . . .

"Our statutes seem to be somewhat in confusion with reference to the time when the

value of property shall be ascertained in fixing the rendition. Article 7174 requires each tract or lot of land to be valued by itself as same may 'be fairly worth in money at the time such assessment is made.' Article 7211 provides that, if the tax assessor is not satisfied with the value placed thereon by the owner, the assessor shall value same, and shall value it at 'the reasonable cash market value of such property at the time of its rendition.' Article 7212 of the Revised Statutes provides that the board of equalization of the county shall supervise the assessments, and, if in their judgment the assessments have not been rendered correctly, that they may make such corrections as in their judgment are proper. Article 7214 of the Revised Statutes provides that the tax assessor, before he enters upon his duties, shall take an oath that he will inspect the property, and will assess same at its market value as of January 1st preceding the assessment. Article 7151 of the Revised Statutes provides that the owner of the property, on January 1st, shall render the same for taxes, and that same shall be rendered between January 1st and April 30th of each year. It thus appears that, under articles 7174 and 7211, the property when rendered shall be valued as at the time of the assessment, and, under article 7214, the assessor is required by his oath to value it as of January 1st.

". . . As above stated, under the decisions of our courts, the owner of the property on January 1st is responsible for the taxes for the ensuing year."

In the case of C. B. Carswell & Co. v. Habberzettle, 87 S.W. 911, the Court stated:

"The court erred in sustaining appellee's exceptions, and striking out the amount of penalties sought to be recovered by appellants. All property owned by a person in this state on the 1st day of January must be listed for taxation between that date and June 1st of each year; and, notwithstanding

the taxes do not become due until the 1st day of October following, he is personally liable for the taxes of that year, though he sells the property before the amount of such taxes has been ascertained, and before the payment thereof becomes due."

Article 7045, V.C.S., is as follows:

"The commissioners courts of the several counties, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the Comptroller the said certificate and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls."

A fundamental canon of constitutional construction is that the conditions existing at the time of the adoption of a constitutional amendment may and should be looked to for the purpose of determining the intent of the amendment. Evidently, the will of the people was expressed and it was reasonably understood at the time of adoption of the change in the tax rate that it should continue for six years from the date of the election. The six year period would automatically be suspended on August 22, 1953, but if the liability for the tax in the year 1953 is fixed before the time limit expires, it is the opinion of this Department that the same may be collected in October, 1953. The person owning property on January 1st is responsible for the taxes for the ensuing year. The Commissioners' Court may calculate the rate prior to the time the tax collector begins to make out receipts and after the tax assessor has forwarded his certificate to the Comptroller. Therefore, if the rate is fixed by the Commissioners' Court before August 22, 1953, for the year 1953, the liability becomes fixed and the collection in October, 1953, would be for a fixed tax due and owing within the six year constitutional period. Further, to say that the year 1952 is the last year Ellis County may collect this tax would be an arbitrary determination that the six year rate was not in effect in 1953. The construction placed upon that part of Section 9, Article VIII of the Constitution by this Department, relating to

"six years from the date of the election", is that the Constitution meant six taxable years, provided all requirements for a valid assessment and levy have been met within the year in which the "six year period" terminates. It necessarily follows, in answer to your question, that Ellis County may collect the 80¢ tax rate in October, 1953, if the same is validly assessed and levied.

Your brief furnished this office was helpful and appreciated.

SUMMARY

The tax rate voted by Ellis County pursuant to Section 9, Article VIII, of the Constitution of Texas, may be collected in October, 1953, despite the termination of the constitutional six year period in August, 1953, provided a valid assessment and a levy are made prior to such termination; the collection of the tax for 1953 is contingent upon the assessment and levy in 1953 before August 22, 1953.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Burnell Waldrep
Burnell Waldrep
Assistant

BW:djm:jrb

APPROVED:

/s/ Fagan Dickson
Fagan Dickson
FIRST ASSISTANT
ATTORNEY GENERAL