



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 23, 1996

The Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 96-098

Re: Whether a justice court may issue a
tax warrant under Tax Code section
33.22(a) in excess of \$5,000 (ID# 38763)

Dear Mr. Driscoll:

Article V, section 19 of the Texas Constitution, together with Government Code section 27.031(a)(1), grants to a justice court jurisdiction in civil matters where the amount in controversy is less than \$5,000.01 and "such other jurisdiction" as the legislature may provide. In Attorney General Opinion DM-320 this office interpreted article V, section 19 to require the legislature, if it is to provide jurisdiction beyond the constitutional grant, to do so "deliberately."¹ You ask whether Tax Code section 33.22 provides a justice court with jurisdiction to issue a tax warrant in cases in which the amount in controversy exceeds \$5,000. Because section 33.22 does not explicitly grant jurisdiction to a justice court, we conclude that the justice court may grant a tax warrant only in those cases in which the amount in controversy is \$5,000 or less.

Article V, section 19 of the Texas Constitution provides a justice of the peace court "exclusive jurisdiction" in a civil matter "where the amount in controversy is two hundred dollars or less," as well as "such other jurisdiction" as the legislature may provide. Government Code section 27.031(a)(1) expands the justice court's original jurisdiction in civil matters to cases in which neither the district nor the county court has jurisdiction and the amount in controversy is \$5,000 or less, exclusive of interest. This jurisdiction is cumulative of jurisdiction provided by other law.²

Tax Code section 33.22(a) permits a tax collector, at any time after a tax becomes delinquent, to apply for a tax warrant authorizing the collector to seize the debtor's personal property.³ The tax collector may file the application in "any court in any county in

¹Attorney General Opinion DM-320 (1995) at 3.

²Gov't Code § 27.031(a).

³See also Tax Code §§ 33.21, .22(b).

which” the debtor has personal property.⁴ The judicial procedure is summary: the court must issue the tax warrant if the applicant has shown by affidavit that

(1) the person whose property he intends to seize is delinquent in the payment of taxes, penalties, and interest in the amount stated in the application; or

(2) the applicant has reason to believe the property owner is about to remove from the county personal property on which a tax has been or will be imposed, the applicant knows of no other personal property the person owns in the county from which the tax may be satisfied, and taxes in a stated amount have been imposed on the property or taxes in an estimated amount will be imposed on the property.⁵

Your question causes us to consider whether Tax Code section 33.22(a) is “other law”⁶ that provides the justice court jurisdiction in addition to that granted in article V, section 19 of the constitution and Government Code section 27.031(a)(1). In other words, may a justice court grant a tax warrant where the amount in controversy exceeds \$5,000?

In Attorney General Opinion DM-320 this office determined that we must construe article V, section 19 strictly.⁷ Thus, the opinion concludes, if the legislature chooses to extend the justice courts’ constitutional jurisdiction, it must do so “deliberately.”⁸ This strict construction ensures, we reasoned, that a justice court will have jurisdiction only of “matters that are suited to the informality of justice court proceedings.”⁹

In our opinion, Tax Code section 33.22(a) does not deliberately grant jurisdiction to a justice court to issue tax warrants. We do not believe it is sufficient, under article V, section 19, to delegate jurisdiction to justice courts by a reference to “any court” in a county. We believe, instead, that the statute must explicitly refer to justice courts. Consequently, section 33.22(a) does not provide a justice court with any jurisdiction beyond that granted in the constitution and Government Code section 27.031(a)(1). A justice court may not, therefore, issue a tax warrant in any case in which the amount in controversy, *i.e.*, the amount of delinquent taxes, exceeds \$5,000.

⁴*Id.* § 33.22(a).

⁵*Id.* § 33.22(c).

⁶Gov’t Code § 27.031(a); *see also* TEX. CONST. art. V, § 19.

⁷Attorney General Opinion DM-320 (1995) at 3.

⁸*Id.*

⁹*Id.*

S U M M A R Y

Tax Code section 33.22(a) does not provide a justice court with any jurisdiction beyond that granted in the constitution and Government Code section 27.031(a)(1). A justice court may not, therefore, issue a tax warrant in any case in which the amount of delinquent taxes exceeds \$5,000.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee