



Mike Stafford  
Harris County Attorney

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OPINION COMMITTEE

Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711

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**RQ-0516-GA**

Dear General Abbott:

We submit the following questions for your opinion:

Are delinquent property taxes not reduced to judgment considered to be a debt for purposes of Sections 262.0276 and 154.045 of the Local Government Code and does either of these sections require other general obligations to be reduced to judgment before becoming "debt?" Local Government Code § 262.0276 provides as follows:

(a) By an order adopted and entered in the minutes of the commissioners court and after notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules permitting the county to refuse to enter into a contract or other transaction with a person indebted to the county.

(b) It is not a violation of this subchapter for a county, under rules adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the county.

(c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the county requiring approval by the commissioners court.

TEX. LOC. GOV'T CODE ANN. § 262.0276 (Vernon 2005).

Section 154.045 provides:

If a notice of indebtedness has been filed with the county auditor or county treasurer evidencing the indebtedness of a person to the state, the county, or a salary fund, a warrant may not be drawn on a county fund in favor of the person, or an agent or assignee of the person, until the person owing the debt is notified that the debt is outstanding and the debt is paid.

TEX. LOC. GOV'T CODE ANN. § 154.045 (Vernon 1999).

## GENERAL DISCUSSION

Section 262.0276 of the Local Government Code was enacted in 2003 by Senate Bill No. 850. Although the statute does not define the nature of the debt, the bill analysis for Senate Bill 850 clearly indicates its legislative intent was to withhold the award of contracts to bidders who are delinquent in property taxes. The bill analysis states:

### BACKGROUND AND PURPOSE

Texas cities, counties, and school districts are prohibited from taking into consideration anything other than general qualifications and price in awarding bid contracts. However, some bidders who have been awarded contracts owe the city, county, or school district back taxes. As proposed, SB 850 allows cities, counties, and school districts to consider whether a bidder has paid their ad valorem taxes to the entity seeking the bid proposal and to refuse to contract with a person or firm so indebted.

Both Local Government Code § 154.025 and § 154.045, applicable to counties depending upon a population of 190,000, were originally enacted in 1935 in comprehensive legislation "prescribing compensation of district, county and precinct officers." Session Laws — Acts 1935, 44<sup>th</sup> Leg., 2d C.S., ch. 465, p. 1762. This appeared in the civil statutes as article 3912e, §§ 7 [*Warrants on Officers' Salary Fund*] and 19(m) [*Provision applicable to counties in excess of 190,000*]. Section 7 was generally applicable to all counties and required no notification to the county auditor; § 19(m) was applicable to counties with a population over 190,000, and required notification to the county auditor before withholding payments. The purpose of this 1935 legislation was to withhold paychecks from county officials who had not turned over collected official fees of office to the county treasurer. This was considered to be a debt to the county. The law was not aimed at the general withholding of payments to persons indebted to the county in some other form or fashion and the 1935 law did not pertain to taxes, overdue or otherwise.

Another longstanding statute prohibits payments to persons indebted to the state. Section 403.055 of the Government Code prohibits the state comptroller from issuing a warrant to a person if he "is indebted or owes delinquent taxes to the state . . ." In 1943,

the attorney general advised the state comptroller on the payment of an unemployment warrant to a person against whom a judgment was awarded in favor of the state. The 1910 law (contained in a general act relating to the comptroller's office and the predecessor statute to Government Code § 403.055) precluded state warrants to "any person indebted to the state." [Article 4350]. The judgment in favor of the state was based on the delinquent payment of unemployment taxes. The attorney general stated that the overdue tax represented by the judgment was not a "debt."

That a state tax is not a debt in the ordinary acceptation [sic] of the term has been so universally accepted in our jurisprudence that we do not deem it necessary to cite extended authority. [citations]. [E]nough is quoted from these cases to support the accepted general rule that taxes are not debts or that one who owes taxes is not indebted to the State.

....

The term "debt" in its ordinary sense does not include a tax. This is supported by cases from practically every state in the Union . . . .

The attorney general then concluded that the comptroller was not authorized to withhold payment because the unemployment tax for which the state had a judgment was not a "debt." Op. Tex. Att'y Gen. No. O-5249 (1943).

In a 1990 opinion, the attorney general advised the county attorney of Lipscomb County that Local Government Code § 154.025, applicable to counties under 190,000, did not furnish a basis on which the county could withhold payments to county officials owing property taxes. The attorney general, relying on opinion O-5249 and other authority, continued the proposition that "'debt' does not include taxes." Op. Tex. Att'y Gen. No. JM-1193 (1990), citing *Brooks v. Brooks*, 515 S.W.2d 730, 733 (Tex. Civ. App. - Eastland 1974, writ ref'd n.r.e.) ("community debt" in divorce action does not include tax obligation); *Rochell v. City of Dallas*, 264 F.2d 166 (5<sup>th</sup> Cir., 1955) ("debt" in bankruptcy action does not include taxes). The attorney general stated:

The attorney general held [in 1943] that the term "debt," as ordinarily used, did not include a tax, and that consequently, the comptroller was not authorized to withhold a warrant on this basis. In so holding, the attorney general was in line with the preponderance of precedent in American courts. See Words and Phrases, "Debt," (West 1971). But cf. *Price v. United States*, 269 U.S. 492 (1926). [fint omitted] Texas courts have also held that, ordinarily, "debt" does not include taxes. *Brooks v. Brooks*, 515 S.W.2d 730, 733 (Tex. Civ. App. - Eastland 1974, writ ref'd n.r.e.). In *Rochelle v. City of Dallas*, 264 F.2d 166 (5th Cir. 1955) cert. denied, 361 U.S. 828 (1959), the court stated:

[W]hile occasionally the words "debts" and "taxes" are used interchangeably, ordinarily this is not so. Indeed in most instances they are used distinctively. This established, it follows that to support a construction of a statute that the word "debt" include taxes, there must be some reason shown to so read a statute other than the fact that sometimes the word debt will include taxes. This reason must be sought in the purpose of the statute, that is the mischief sought to be prevented and the appropriate means to achieve that end.

The purpose of section 154.025 of the Local Government Code is to insure[sic] payment of obligations owing to the county. *Rains v. Mercantile Nat'l Bank at Dallas*, 188 S.W.2d 798, 804 (Tex. Civ. App. - El Paso 1945) (construing section 7 of predecessor article 3912e) aff'd, 191 S.W.2d 850, 854 (Tex. 1946). While such a purpose could as easily apply to delinquent taxes as to any other obligation, we have no basis for finding that the legislature meant the word "indebted" in section 154.025 of the Local Government Code to have a more inclusive meaning than it would ordinarily have. To the contrary, we note the legislature has, with regard to other legislation, affirmatively indicated by the use of express language its intent to include delinquent taxes as a bar to the issuance of government warrants.

For example, article 4350, quoted above, was amended by House Bill 2067 in 1977 to read:

No warrant shall be issued to any person indebted or owing delinquent taxes to the State, or to his agent or assignee, until such debt or taxes are paid.

....

In conclusion, section 154.025 of the Local Government Code does not prohibit a county from paying the salaries of county employees or elected officials who are delinquent in ad valorem tax obligations. As this resolves your question, we need not consider under what circumstances, if any, an agreement to make periodic payments could be considered a discharge of indebtedness for purposes of Local Government Code section 154.025.

Op. Tex. Att'y Gen. No. JM-1193 (1990). The attorney general also referenced the bill analysis in 1977 amending the comptroller statute to add "or owes delinquent taxes." The analysis indicated that the intent of the 1977 amendment was to include delinquent taxes as a basis to withhold a state warrant. The attorney general noted, consequently:

As the legislature has not enacted an analogous amendment to section 154.025 of the Local Government Code, we conclude that the term "indebted" as used in that statute does not include outstanding tax obligations.

The attorney general concluded that the county could pay county employees who were delinquent in ad valorem taxes.

Most recently, Attorney General Opinion JC-87 clarified Local Government Code § 154.025 in a question from the county attorney of Brazos County asking whether a salary warrant may be paid to a justice of the peace against whom a judgment had been entered for delinquent property taxes. The attorney general concluded that a debt is established by a judgment for back taxes. (The opinion did not indicate, however, whether other "indebtedness to the county" must be supported by a judgment.) The opinion stated:

We are persuaded that even if a delinquent tax is not a debt, once a valid judgment for delinquent property taxes has been entered, a debt has been established for purposes of section 154.025 of the Local Government Code. Accordingly, we hold that section 154.025 of the Local Government Code prohibits the drawing of a warrant on a county fund in favor of a justice of the peace against whom a judgment has been entered for delinquent property taxes until the justice is notified that the debt is outstanding and the debt is paid.

Op. Tex. Att'y Gen. No. JC-87 (1999).

Sincerely,

MIKE STAFFORD  
Harris County Attorney

By: David B. Brooks  
David B. Brooks *by DMB*  
Assistant County Attorney

Approved:

*John R. Barnhill*  
John R. Barnhill  
First Assistant County Attorney