

ASSISTANT COUNTY
ATTORNEYS

Deanna Belknap
Nicole Stratso
Rena Whitsett

CRIMINAL DIVISION

Paulinda Proffitt
Justin Stobaugh

HOT CHECK DIVISION

Pam Crocker

HOOD COUNTY ATTORNEY'S OFFICE

1200 W. PEARL ST., GRANBURY, TEXAS 76048



PHONE
(817) 579-3215
(817) 579-3216

FAX
(817) 579-3257
(817) 579-3218

WWW.CO.HOOD.TX.US

OFFICE MANAGER
Lorraine Manning

CIVIL & JUVENILE
DIVISION
Linda Parr

VICTIM SERVICES
Julie Pritchett

INVESTIGATOR
Birt "Pete" Wilkerson

LORI J. KASPAR, COUNTY ATTORNEY

November 25, 2015

RECEIVED

The Honorable Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

NOV 30 2015

OPINION COMMITTEE

FILE # ML-47883-15
I.D. # 47883

RQ-0080-KP

Dear Attorney General Paxton:

At the request of Hood County Precinct One Commissioner James Deaver, I seek your opinion concerning interest earned by the appraisal district on county tax money and the liability of the tax assessor-collector for that money.

Hood County has contracted with the local appraisal district to collect property taxes since 1985 in accordance with Section 6.24(c) Texas Tax Code. Under the terms of the current contract, the appraisal district deposits the taxes with the county at least two times per month. Between deposits, the appraisal district holds the taxes in an interest-bearing account. The appraisal district keeps the interest earned on the taxes.

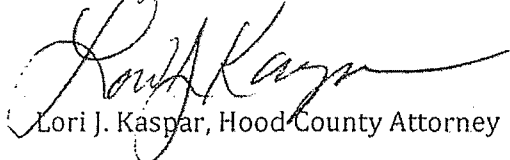
The County can find no laws dictating the distribution of interest earned on county tax money. The County also seeks guidance on the liability of the tax assessor-collector while County money is in the custody of the appraisal district.

Therefore, the County requests an opinion on three questions related to the interest and the liability of the county tax assessor-collector:

- (1) Does the interest earned on county taxes held by the appraisal district belong to the county, the tax assessor-collector, or the appraisal district?
- (2) If the interest money belongs to either the county or the county tax assessor-collector, must the appraisal district account for and remit all of the past interest it has collected on county taxes?
- (3) When a county contracts with an appraisal district to collect its taxes and the appraisal district holds those taxes for a period of time before depositing the funds with the county, is the tax assessor-collector personally liable for funds being held by the appraisal district?

Attached to this request letter is a brief detailing the County's position on these issues. If you have any questions, please do not hesitate to contact my office.

Sincerely,


Lori J. Kaspar, Hood County Attorney

Attorney General Opinion Request

Brief on behalf of Hood County

Facts

Since 1985, Hood County has contracted with the local appraisal district to collect property taxes in accordance with Section 6.24(c) Texas Tax Code. Under the terms of the current contract, the appraisal district deposits the taxes with the county at least two times per month.¹ Between deposits, the appraisal district holds the taxes in an interest-bearing account. The contract does not contain any provisions regarding to whom the interest belongs. The appraisal district keeps the interest earned on the taxes.

Questions Presented

Question 1:

Does the interest earned on county taxes held by the appraisal district belong to the county, the county tax assessor-collector, or the appraisal district?

Question 2:

If the interest money belongs to either the county or the county tax assessor-collector, must the appraisal district account for and remit all of the past interest it has collected on county taxes?

Question 3:

When a county contracts with an appraisal district to collect its taxes and the appraisal district holds those taxes for a period of time before depositing the

¹ Tex. Tax Code Ann. § 31.10(d) (West). During the peak tax collection period, the appraisal district remits more frequently.

funds with the county, is the tax assessor-collector personally liable for funds being held by the appraisal district?

Applicable Law

Responsibility of the county tax assessor-collector

The county tax assessor-collector has a constitutional and statutory responsibility for assessing and collecting property taxes for the county.

An assessor-collector of taxes shall hold office for four years; and shall perform all the duties with respect to assessing property for the purpose of taxation and of collecting taxes, as may be prescribed by the Legislature.²

The tax assessor-collector may also be responsible for assessing and collecting taxes for other taxing units in the county.³ With the approval of the county tax assessor-collector, the commissioners court may contract with the appraisal district to assess and collect all property taxes.⁴ An appraisal district acts merely as the agent of the taxing units for which it makes appraisals; the appraisal district does not transform into a taxing unit when it collects taxes for an entity.⁵ A contract for collecting taxes on behalf of a taxing entity does not divest a county tax assessor collector of her authority.⁶

A county tax assessor-collector and any surety on the assessor-collector's bond are liable for safekeeping funds collected from taxes until the funds are deposited as required by law with the county depository.⁷ If a tax assessor-collector neglects to collect a fee or commission, the commissioners court is authorized to deduct the fee or commission from a

² Tex. Const. art. VIII, § 14 (West).

³ Tex. Tax Code Ann. § 6.23 (West).

⁴ Tex. Tax Code Ann. § 6.24(b) (West).

⁵ Tex. Att'y Gen. Op. LO-97-041 at 2.

⁶ See Tex. Att'y Gen. Op. JM-833 (1987); Tex. Att'y Gen. Op. DM-470 (1988) at 1; Tex. Att'y Gen. Op. JM-1025 (1989) at 5; Tex. Att'y Gen. Op. JM-1015 (1989) at 5; Tex. Att'y Gen. Op. JM-966 (1989) at 4.

⁷ Tex. Loc. Gov't Code Ann. § 113.006 (West).

tax assessor-collector's salary.⁸ However, only a district court may relieve a tax assessor-collector of her responsibility for any non-negligent loss of public funds in her custody.⁹

Deposits of taxes collected

The intent of the deposit law is clear: when another entity collects taxes for a county, that entity should immediately remit the county's money to the county. In contrast, a tax assessor-collector need only deposit tax money monthly. Section 31.10 of the Tax Code states:

- c) Except as otherwise provided by Subsection (d) of this section, *at least monthly the collector for a taxing unit shall deposit in the unit's depository all taxes collected for the unit.* The governing body of a unit may require deposits to be made more frequently.
- d) If the taxes of a taxing unit are collected by the collector or other officer or employee of another taxing unit or by an appraisal district as provided by the law creating or authorizing creation of the unit or as the result of an election held under Section 6.26 of this code, *the entity that collects the taxes shall deposit the taxes in the unit's depository daily,* unless the governing body of that unit by official action provides that those deposits may be made less often than daily.¹⁰

General rule regarding money earned on taxes and fees

The general rule regarding money earned on taxes and fees is this: any money earned on taxes belongs to the entity for which the taxes were collected. Interest is considered as an addition to the principal fund earning it, and belongs to the principal fund.¹¹

⁸ Tex. Loc. Gov't Code Ann. § 154.009 (West).

⁹ Tex. Att'y Gen. Op. JM-1055 (1988) at 2.

¹⁰ Tex. Tax Code Ann. § 31.10 (West) (emphasis added).

¹¹ *Lawson v. Baker*, 220 S.W. 260, 272 (Tex. Civ. App. 1920), writ refused (Mar. 16, 1921).

Tax certificate fees belong to the taxing entity

A taxing unit may not contract with an appraisal district that collects its taxes to retain tax certificate fees.¹² A taxing unit is an entity that is “authorized to impose and is imposing ad valorem taxes on property.”¹³ Because an appraisal district is not authorized to impose taxes, it is not a taxing unit as defined by the Tax Code.¹⁴ An appraisal district acts as the agent of the taxing units for which it makes appraisals.¹⁵

A chief appraiser of an appraisal district must pay a tax certificate fee into the treasury of the taxing unit for which the chief appraiser collects the taxes at issue on the certificate. If the certificate pertains to taxes of more than one taxing unit, the fee must be distributed among the taxing units. The chief appraiser may not retain tax certificate fees.¹⁶

Fines related to auto dealers' inventory belong to the taxing entity

The county retains the fines imposed on dealers for failure to file under § 23.122.¹⁷

Interest on motor vehicle sales tax for the State belongs to the State

The county tax assessor-collector may deposit automobile license fees in a bank's daily interest savings account while she is in possession of these funds. All interest earned

¹² Tex. Att'y. Gen. Op. LO-97-041 at 1.

¹³ Tex. Tax Code Ann. § 1.04 (West).

¹⁴ Tex. Att'y Gen. Op. JM-919 (1988) at 2.

¹⁵ *Id.*

¹⁶ Tex. Att'y. Gen. Op. LO-97-041 at 2.

¹⁷ Tex. Att'y Gen. Op. LO-98-085 at 5.

on the fees being held for the State must be paid to the State and cannot be held by the county.¹⁸

Interest earned on an escrow account belongs to the tax assessor-collector

Section 23.122 provides a statutory exception to the general rule that money earned on taxes belongs to the entity for which the taxes were collected. That section directs a tax collector to collect and administer prepayments of property taxes on auto dealers' inventory. As part of the collection process, tax collectors must maintain funds in escrow accounts. The interest on those accounts is the sole property of the collector.¹⁹

Even if a county contracts with an appraisal district to collect an inventory tax, interest earned on the escrow account remains the "sole property of the [tax assessor-collector]" and not the appraisal district.²⁰ An appraisal district has only derivative authority to collect taxes. Therefore, although a county may authorize an appraisal district to collect taxes for the county, the authorization does not transform the appraisal district into a taxing unit.²¹

Interest earned on county taxes

Hood County is aware of no law granting an appraisal district the authority to keep interest earned on county taxes.

¹⁸ Tex. Att'y Gen. Op. MW-47 at 2 (1979).

¹⁹ Tex. Tax Code Ann. § 23.122 (West); Tex. Att'y Gen. LO-98-085 at 4.

²⁰ Tex. Tax Code Ann. § 23.122(c) (West); Tex. Att'y Gen. Op. LO-98-085 at 4.

²¹ Tex. Att'y Gen. Op. LO-97-041 at 2.

County's Arguments

In the case at hand, the appraisal district is an agent of the county for the purpose of collecting property taxes.²² A county may not contract away the constitutional duties or the liabilities of the tax assessor-collector. If interest is earned on county tax money being held by the appraisal district, the appraisal district must remit the interest to the county.

Question 1. The interest earned on county taxes held by the appraisal district belongs to the county.

There are no statutory provisions that interest earned on county property taxes belongs to the county. However, because other laws and attorney general opinions cited above grant any money earned on taxes to the taxing entity, it follows that the interest earned on county taxes belongs to the county and not to the appraisal district.

Appraisal districts do not transform themselves into taxing units when they contract with a county to collect their taxes. Appraisal districts are merely agents of the taxing unit.²³ The ad valorem taxes they collect belong to the taxing unit, not the appraisal district. Therefore, any interest earned on taxes while being retained by an appraisal district must belong to the taxing unit.

²² Tex. Att'y Gen. Op. LO-97-041 at 2.

²³ Tex. Att'y Gen. Op. LO-97-041 at 2.

Question 2. The appraisal district must remit all interest it has previously collected on county taxes to the county.

If the interest earned on county property taxes belongs to the county, then all interest earned to date and kept by the appraisal district must be accounted for and remitted to the county.

Question 3. The tax assessor-collector remains personally liable for any funds until they are deposited in the county treasury.

A county tax assessor-collector and any surety on the assessor-collector's bond are responsible for safekeeping funds collected from taxes until the funds are deposited as required by law with the county depository.²⁴ The commissioners court may not pardon the tax assessor-collector for a loss of funds even if the court finds the tax assessor-collector is not negligent in losing the funds.²⁵

A county assessor-collector is not personally liable for the loss of public funds in the custody of the assessor-collector or the assessor-collector's office if a district court enters a declaratory judgment that the loss is due to a reason other than the negligence or misconduct of the assessor-collector.²⁶

Therefore, even when the commissioners court agrees with the county tax assessor-collector that a loss of money was not due to the county tax assessor-collector's negligence,

²⁴ Tex. Loc. Gov't Code Ann. § 113.006 (West).

²⁵ Tex. Att'y Gen. Op. JM-1055 (1988) at 2.

²⁶ Tex. Tax Code Ann. § 6.275 (West).

a suit under the Uniform Declaratory Judgment Act must be filed in district court pursuant to section 6.275 of the Tax Code.²⁷

Consequently, a tax assessor-collector remains liable for funds held by the appraisal district unless a district court absolves her from liability in a suit for declaratory judgment.



²⁷ *Id.* at 3.