



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 29, 1998

The Honorable James M. Kuboviak
Brazos County Attorney
300 East 26th Street, Suite #325
Bryan, Texas 77803

Letter Opinion No. 98-085

Re: Whether the county tax assessor-collector may approve an interlocal contract under Tax Code section 6.24(b) to collect dealers' motor vehicle inventory tax prepayments the collector is authorized to collect under Tax Code section 23.122 and related question (RQ-1039)

Dear Mr. Kuboviak:

You request an opinion from this office about sections 6.24(b) and 23.122 of the Tax Code. You first ask whether the county tax assessor-collector (the "collector") may approve a contract with another taxing unit in the county or the appraisal district under section 6.24(b) to collect the dealers' motor vehicle inventory tax ("inventory tax") that the collector is authorized to collect and administer under section 23.122. We conclude that the collector may approve a contract pursuant to section 6.24(b) for collection of the inventory tax. Assuming such a contract is permissible, you also ask, if the collector and the county may retain the fines and interest earnings provided for in section 23.122. Because section 23.122 expressly requires that the collector retain the interest earnings and the county the fines, we conclude in the affirmative.

Section 23.122 of the Tax Code, enacted in 1993,¹ provides for the collection and administration of property taxes imposed by all taxing units authorized to tax motor vehicle inventory in the county.² Sections 23.121 and 23.122 together create a special inventory category for dealer's motor vehicles and require a dealer to make monthly deposits with the collector³ as prepayment of property taxes imposed on the inventory by relevant taxing units.⁴ Under section

¹See Act of May 25, 1993, 73d Leg., R.S., ch. 672, § 4, 1993 Tex. Gen. Laws 2501, 2502.

²See Tax Code § 23.122.

³See *id.* §§ 23.121 ("Collector" means the county tax assessor-collector in the county in which a dealer's motor vehicle inventory is located.), .122(a)(3) (term "collector" has meaning given in section 23.121).

⁴See Act of May 25, 1993, 73d Leg., R.S., ch. 672, § 4, 1993 Tex. Gen. Laws 2501, 2502; Senate Comm. on Finance, Bill Analysis, C.S.S.B. 878, 73d Leg. (1993) (Background), (Purpose); House Comm. on Ways and Means, Bill Analysis, S.B. 878, C.S.S.B. 878, 73d Leg. (1993).

23.122, a dealer⁵ must file with the collector a monthly statement covering the sale of each motor vehicle sold in the prior month and remit the total amount of taxes⁶ assigned to those motor vehicles sold.⁷ The collector in turn must deposit the taxes remitted in the dealer's escrow account that the collector is also required to maintain for each dealer at the county depository. A relevant taxing unit must itemize the taxes levied against the inventory on its tax bill, and provide a copy of the bill to the collector.⁸ The collector then "shall apply the amount to each relevant taxing unit in proportion to the amount of taxes levied, and the assessor of each relevant taxing unit shall apply the funds received from the collector to the taxes owed by the owner."⁹ "Relevant taxing unit" in section 23.122 means "a taxing unit, including the county, authorized by law to levy property taxes against a dealer's motor vehicle inventory."¹⁰ Thus section 23.122 directs the collector to collect and administer prepayments of property taxes on dealers' motor vehicle inventory levied by the several taxing units, including the county.

You first ask: "can a county tax assessor-collector delegate his/her authority as prescribed in section 23.122, therefore allowing a commissioner's court to contract under section 6.24(b), Interlocal Agreement, with another taxing unit or appraisal district to collect [the inventory tax] [?]." Because section 23.122 authorizes only the collector to collect the inventory tax, you believe that approval by the collector of an interlocal contract pursuant to section 6.24(b) would require the collector to unlawfully delegate the authority vested in the collector by section 23.122. Alternatively, we understand you to suggest, that section 6.24(b) does not apply to section 23.122.¹¹ We disagree for the following reasons.

Tax Code section 6.24(b) originally enacted in 1979,¹² currently provides as follows:

The commissioners court with *the approval of the county assessor-collector* may contract as provided by the Interlocal Cooperation Act with the governing body of another taxing unit in the county or with the board of directors of the appraisal district for the other unit or the district to perform

⁵See Tax Code § 23.121(a)(3) (defining "dealer").

⁶See *id.* § 23.122(a)(12) (defining "unit property tax factor"), (b) (dealer required to assign unit property tax to each motor vehicle sold).

⁷*Id.* § 23.122(a)(4), (b), (f).

⁸*Id.* § 23.122(i).

⁹*Id.*

¹⁰See *id.* § 23.122(a)(7) (defining "taxing unit" for purposes of Property Tax Code as political unit of state authorized to and imposing ad valorem taxes on property). *Id.* § 1.04(12).

¹¹You do not provide any details or specify the legal basis for your concerns.

¹²The legislature adopted section 6.24(b) in 1979 as part of the Property Tax Code, title 1 of the Tax Code. See Act of May 26, 1979, 66th Leg., R.S., ch. 841, § 6.24, 1979 Tex. Gen. Laws 2217, 2228.

duties relating to the assessment or collection of taxes for the county. If a county contracts to have its taxes assessed and collected by another taxing unit or by the appraisal district, the contract shall require the other unit or the district to assess and collect all taxes the county is required to assess and collect. [Emphasis added.]

Section 6.24(b) authorizes contracts to assist the collector in assessing and collecting property taxes¹³ for the county. Section 6.24(b) contracts do not supplant the collector or divest the collector's authority.¹⁴ Section 6.24(b) has been so construed precisely to avoid the issues of unlawful delegation of the power, authority, and responsibility vested in the collector by the constitution and the legislature.¹⁵

In Attorney General Opinion JM-833, this office concluded that section 6.24(b) authorizes contracts to assist the county tax assessor-collector with respect to the assessment or collection of taxes, not to supplant him, in order to preserve the statute's constitutionality under article VIII, section 14 of the Texas Constitution.¹⁶ This constitutional provision places in the collector "all the duties with respect to assessing property for the purpose of taxation and of collecting taxes [for the county], as may be prescribed by the Legislature."¹⁷ Attorney General Opinion JM-833 determined the constitutional language to mean "all duties with respect to assessing property for the purpose of county taxation and of collecting county taxes that the legislature prescribes—except the appraisal function (now permitted by the constitution to be placed elsewhere)—are to be performed by the tax assessor-collector of the county."¹⁸ Accordingly, the opinion stated that although "with the approval" in section 6.24(b) could be given a broader meaning, a statute should be construed

¹³See Act of May 26, 1979, 66th Leg., R.S., ch. 841, § 1, 1979 Tex. Gen. Laws 2217, 2217; see also Tax Code 1.02 (Applicability of Title). "Property" means "any matter or thing capable of private ownership." Tax Code § 1.04(1). Texas Constitution article VIII, section 1(b) provides as follows: "All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be proved by law."

¹⁴See Attorney General Opinion JM-833 (1987); see also Attorney General Opinions DM-470 (1998) at 1; JM-1025 (1989) at 5; JM-1015 (1989) at 5; JM-996 (1988) at 4.

¹⁵See Attorney General Opinion JM-833 (1987) at 6-8.

¹⁶Attorney General Opinion JM-833 (1987); see *Green v. Stewart*, 516 S.W.2d 133 (Tex. 1974) (deputies appointed under statute to assist county tax assessor-collector with assessment and collection duties acted in his right and not in their own right; therefore statute appointing deputies not in conflict with Tex. Const. art. VIII, § 14); *Pritchard & Abbott v. McKenna*, 350 S.W.2d 333, 335 (Tex. 1961) (commissioners court may not interfere or usurp sphere of duties of elected officials including tax assessor-collector but commissioners court can contract for appraisal experts to assist it in carrying out its own responsibilities as board of equalization).

¹⁷Tex. Const art. VIII, § 14.

¹⁸Attorney General Opinion JM-833 (1987) at 6.

restrictively when necessary to preserve its constitutionality.¹⁹ The opinion explained that “[w]e cannot assign to the legislative act an intent to authorize the assessor-collector, by his ‘approval,’ to divest himself of power, authority, and responsibility invested in him by the constitution—something the legislature itself could not do.”²⁰

In sum, section 6.24(b) authorizes a contract only to assist the collector in assessing and collecting taxes. Accordingly, the collector’s approval of the contract does not constitute an unlawful delegation of the collector’s authority. Similarly, we do not believe that approval by the collector of a contract pursuant to section 6.24(b) for collection of the inventory tax would constitute an unlawful delegation of the collector’s section 23.122 authority. Such a contract would not supplant the collector or divest the collector of the collection and administration authority; the controller retains that authority.

You also suggest that the legislature did not intend another taxing unit or the appraisal district to collect the inventory tax pursuant to a section 6.24(b) contract. If the legislature had intended another unit or the appraisal district to collect the inventory tax, you assert, “collector” for the purposes of section 23.122 would have been defined as the county assessor-collector *or designated agent of the county assessor-collector* in the county that the vehicle is located.

By its terms, section 6.24(b) authorizes a commissioners court, with the approval of the county tax assessor-collector, to execute contracts with another taxing unit or the appraisal district for the assessment and collection of property taxes for the county. The legislature clearly intended by this provision, among others, that taxing units assess and collect taxes for other taxing units²¹ to promote efficiency and economy in the performance of governmental functions.²²

There is no reason to believe that the legislature did not intend section 6.24(b) to apply to tax collections under section 23.122. The legislature enacted section 6.24(b) to apply to tax collections under section 23.122. The legislature enacted section 6.24(b) in 1979. We must presume the legislature was aware of that statute’s existence when it adopted section 23.122 in 1995.²³ If the

¹⁹*Id.* at 8.

²⁰*Id.*

²¹See Tax Code §§ 6.23, .24, .26; *Eldridge v. State*, 940 S.W.2d 646, 652 (Tex. Crim. App. 1996) (primary indicator of legislative intent is statute’s literal language because it best indicates legislature’s intent at time legislature adopted statute).

²²See *Bexar County v. North E. Indep. Sch. Dist.*, 802 S.W.2d 854, 857 (Tex. App.—San Antonio 1990, writ denied) (“The trend of recent ad valorem tax legislation has been to centralize and streamline the collection process in order to make it more efficient and cost-effective.”); Attorney General Opinion JM-996 (1988) at 3 (“The legislature clearly intended that taxing units in certain instances assess and collect taxes for other taxing units in order to promote efficiency and economy in the performance of governmental functions. . . . See Tax Code §§ 6.23, .24, .26.”).

²³See *Garner v. Lumberton Indep. Sch. Dist.*, 430 S.W.2d 418, 423 (Tex. Civ. App.—Austin 1968, no writ)
(continued...)

legislature did not intend that section 6.24(b) apply to the collection of the inventory tax, we believe it would have so expressly provided.²⁴ It has not done so. Moreover, we do not believe the legislature's failure to define "collector" in section 23.122 as the county assessor-collector *or designated agent of the county assessor-collector* in the county that the vehicle is located evidences its intent that section 6.24(b) not apply to the inventory tax as you contend. There was no reason to define collector as you suggest.²⁵ Another taxing unit or the appraisal district collecting the inventory tax pursuant to a section 6.24(b) contract would simply *assist* the collector in performing duties the collector is charged with under section 23.122.²⁶ The other taxing unit or the appraisal district would not supplant the collector.²⁷

You next ask: "if another taxing unit or appraisal district collects the [inventory tax pursuant to a section 6.24(b) contract], does the interest earned from the escrow account go to the county assessor-collector as defined in Tax Code [section] 23.122(c) and [do] the fines collected for failure to file a required inventory statement go to the county general fund as defined in Section 23.122(p)[?]." We conclude in the affirmative based on the express provisions of the statute.

Section 23.122 specifically directs the collector to retain interest earnings derived from administration and collection of the inventory tax. Subsection (c) provides that the collector "shall retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section" and that "[i]nterest generated by an escrow account created as provided by this section is the sole property of the collector, and that interest may be used by no entity other than the collector." Under this provision, the collector does not have the right to retain the funds derived from the interest on the inventory escrow account for the personal use and benefit of the collector.²⁸ However, as this office stated in Attorney General Opinion DM-398 "the collector does have an *exclusive*, but not unconditional right to the disposal

²³(...continued)

(settled law in Texas that it must be presumed legislature acted with full knowledge of all existing statutes, particularly those dealing with subject matter under consideration, and that legislature acted with knowledge of prior decisions upon the subject); *see generally* 67 TEX. JUR. 3D *Statutes* § 134 (1989).

²⁴*See Eldridge*, 940 S.W.2d at 652 (primary indicator of legislative intent is statute's literal language because it best indicates the legislature's intent at time legislature adopted statute); *State v. Kaiser*, 822 S.W.2d 697, 700 (Tex. App.--Fort Worth 1991, pet. ref'd) (existence or nonexistence of particular intent of statute may be inferred from fact that statute does not contain certain provision); *see also State v. Broadus*, 952 S.W.2d 598, 601 n.4 (Tex. App.--Houston [14th Dist.] 1997, pet. granted).

²⁵*See supra* note 23.

²⁶*See* Attorney General Opinion JM-833 (1987); *see also supra* discussion at 3-4.

²⁷*See supra* note 26.

²⁸Attorney General Opinion DM-398 (1996) at 2.

of the fund.”²⁹ Disposal of the fund, of course, is subject to the condition that it be used to defray the costs of administering the inventory tax prepayment procedure.³⁰ Accordingly, this office concluded in Attorney General Opinion DM-398 that interest generated by the inventory escrow accounts constitutes a fund that is to be used at the discretion of the collector to defray the costs of administering the statutory prepayment procedure.³¹

Section 23.122(c) plainly directs the collector to retain and use the interest earned on escrow accounts.³² You do not provide and we are unaware of any authority that would allow these funds to be directed otherwise. We do not believe the fact that another taxing unit or the appraisal district is authorized pursuant to a contract to collect the inventory taxes transforms the taxing unit or the appraisal district into the collector.³³ Such derivative authority to collect the taxes does not change another taxing unit or the appraisal district into the collector.

Of course, interest earned on the escrow fund may only be used to defray the costs of administering the prepayment program.³⁴ For example, the collector might allocate the interest as a source of funds to make payments on a section 6.24(b) contract for collecting the inventory tax.³⁵

Similarly, section 23.122 directs that certain fines be deposited in the county’s general fund. Dealers who fail to file the statutorily required motor vehicle inventory tax statements with respect to vehicles sold in the prior month commit a misdemeanor punishable by a fine not to exceed \$100.³⁶ Subsection (p) provides that “[f]ines collected pursuant to the authority of this section shall be deposited in the county depository to the credit of the general fund.”

²⁹*Id.* (emphasis added).

³⁰*Id.*

³¹*Id.* at 3-4.

³²“Collector” means “the county tax assessor-collector in the county in which a dealer’s motor vehicle inventory is located.” Tax Code § 23.121(a)(2).

³³*Cf.* Letter Opinion No. 97-041 (1997) at 2 (fact that appraisal district is authorized by contract to collect taxes for taxing units does not transform appraisal district into taxing unit; appraisal district’s derivative authority to collect taxes not authority to impose taxes).

³⁴*See* Tax Code § 23.122(c); Attorney General Opinion DM-398 (1996) at 4 (interest may not be used for general office expenses of collector unrelated to costs of prepayment program).

³⁵*See* Letter Opinion No. 97-041 (1997) (taxing unit that enters into contract with appraisal district for tax assessment and collection under section 6.24(b) may compensate appraisal district in part with tax certificate fee revenue to which taxing unit would otherwise be entitled); *see also* Gov’t Code § 791.011 (“An interlocal contractual payment must be in amount that fairly compensates the performing party for the services or functions performed under the contract.”).

³⁶Tax Code § 23.122(m).

Section 23.122(p) clearly directs deposit of the fines imposed for failure to file monthly tax statements in the county general fund. Again, you do not provide and we are unaware of any authority that would allow these funds to be directed otherwise. As previously indicated, a taxing unit or appraisal district's derivative authority to collect taxes pursuant to a section 6.24(b) contract does not change the taxing unit or the appraisal district into the county.³⁷

S U M M A R Y

A county tax assessor-collector may approve an interlocal contract with another taxing unit in the county or the appraisal district under Tax Code section 6.24(b) to collect the dealers' motor vehicle inventory tax prepayments the collector is authorized to collect and administer under Tax Code section 23.122. Even if another taxing unit or the appraisal district collects the motor vehicle inventory tax pursuant to such a contract, the collector retains the interest earnings on dealers' escrow accounts, and the county retains the fines imposed on dealers for failure to file the motor vehicle inventory tax statements as required by section 23.122.

Yours very truly,



Sheela Rai
Assistant Attorney General
Opinion Committee

³⁷See *supra* note 33.