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example, the City of Dallas tried to levy an ad valorem tax on the office furniture and fixtures of a domestic insurance company notwithstanding a statute declaring the situs of all such personal property to be at the home office of any domestic insurance company. The supreme court brushed aside the argument that “where situated” in Section 11 fixed the situs of tangible personal property. In the court’s view, the words in Section 11 did not represent a new definition of situs. In the absence of such a constitutional definition, situs remains a matter of the common law, which in turn can almost always be changed by statute. This, the court held, was validly done when the situs of tangible personal property was placed in the home office of insurance companies rather than “where situated.” (156 Tex. 36, 291 S.W.2d 693 (1956).) See also *City of Dallas v. Overton* (363 S.W.2d 821 (Tex. Civ. App.—Dallas 1962, writ *ref’d n.r.e.*)), where it was held that an airplane should be taxed where kept rather than where its owner lived. The court so decided on the basis of the common law and explicitly did not rely upon the words “where situated.” Thus, Section 11, notwithstanding frequent mention in court opinions, is of no significance as a limitation on the legislature’s power to determine the situs of personal property for tax purposes.

As noted in the *Author’s Comment* below, the second sentence concerning unrendered property is superfluous. Courts have cited the sentence in holding that a board of equalization may not add property which the assessor has omitted from the tax rolls. (See, e.g., *San Antonio Street Ry. v. City of San Antonio*, 54 S.W. 907 (Tex. Civ. App. 1899, *no writ*).) But courts would undoubtedly have reached the same conclusion absent the second sentence of Section 11. (See *Explanation of Sec. 18.*)

Comparative Analysis

Only a few states have any kind of provision concerning the situs of property for purposes of assessment. No other state appears to have a provision concerning where payment must be made. Many states have a provision concerning the standard of valuation. (See *Comparative Analysis of Sec. 1.*) The *Model State Constitution* is silent on this subject.

Author’s Comment

The first sentence of this section evaporates unless somebody thinks it makes a difference that legislative action has to be by a two-thirds vote. Nothing seems less vital in a constitution than a provision which says that things are thus and so unless the legislature provides otherwise. Moreover, such a provision implies that today’s conditions will not remain the same for long. Delegates writing a constitution ought to think twice before saddling future generations with today’s solution to what may be a nonproblem tomorrow. In 1875 not many people paid their bills by check, which undoubtedly contributed to the argument over where taxes should be paid. But one would think that delegates to a convention could recognize that this is an ephemeral matter to be left wholly, not partially, to the legislature.

The second sentence is an example of saying the same thing over and over. Section 1 states that *all* property is to be taxed in proportion to its value. The second sentence of Section 11 does nothing except to tell the “proper officer” to do his duty as commanded by Section 1. Thus, the second sentence also evaporates.

Sec. 13. SALES OF LANDS AND OTHER PROPERTY FOR TAXES; REDEMPTION. Provision shall be made by the first Legislature for the speedy sale, without the necessity of a suit in Court, of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale in like

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manner of all lands and other property upon which the taxes have not been paid; and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; provided, that the former owner shall within two years from date of the filing for record of the Purchaser's Deed have the right to redeem the land on the following basis:

(1) Within the first year of the redemption period upon the payment of the amount of money paid for the land, including One (\$1.00) Dollar Tax Deed Recording Fee and all taxes, penalties, interest and costs paid plus not exceeding twenty-five (25%) percent of the aggregate total;

(2) Within the last year of the redemption period upon the payment of the amount of money paid for the land, including One (\$1.00) Dollar Tax Deed Recording Fee and all taxes, penalties, interest and costs paid plus not exceeding fifty (50%) percent of the aggregate total.

History

The 1869 Constitution had two sections aimed at cleaning up delinquent taxes. One commanded the "first" legislature to provide "for the condemnation and sale of all lands for taxes due thereon; and, every five years thereafter, of all lands, the taxes upon which have not been paid to that date." (Art. XII, Sec. 22.) The other section provided: "Landed property shall not be sold for taxes due thereon, except under a decree of some court of competent jurisdiction." (Sec. 21.)

The section as adopted by the 1875 Convention read the same as the present Section 13 down to the redemption proviso except for the phrase "without the necessity of a suit in Court." This phrase was added by amendment in 1932. That amendment also substituted the present redemption proviso for the original wording: ". . . provided that the former owner shall, within two years from the date of purchaser's deed, have the right to redeem the land upon the payment of double the amount of money paid for the land."

Explanation

Under normal circumstances a legal system provides a means for collecting debts, including seizure and sale of assets. In the case of taxes, there appear to have been two lines of cases. One said that a common law action for debt would not lie unless the government affirmatively so provided by statute; the other line said that, unless the constitution or statute forbade a common law action for debt, the government could bring one. In *City of Henrietta v. Eustis*, the supreme court noted that Texas followed the latter rule. Accordingly, the court looked at the constitution and implementing statutes and concluded that nothing precluded a personal action against an individual for unpaid taxes in addition to foreclosing on the property on which the tax was levied. (87 Tex. 14, 26 S.W. 619 (1894). Note: In the discussion that follows, "property" means real estate. Section 13 covers "other property," but all of the cases discussed deal with real property.)

It follows that there is no need to put into a constitution any statement about the power of the government to collect its taxes. In the light of this, one can speculate about what the 1875 Convention thought it was doing in drafting Section 13. First, it is clear that the convention meant to remove the quoted 1869 limitation that forbade summary tax sales, that is, sales by the tax collector to the highest bidder. Second, it seems likely that such words as "speedy sale" and "vest a good and perfect title" were nothing more than a plea by the delegates to the legislature and the courts not to make it difficult to collect delinquent taxes. (Prior to 1875 the strict procedure for tax sales resulted in faulty titles which, in turn, tended to protect a delinquent taxpayer. See Miller, pp. 109-10.) Third, it seems likely that the

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delegates thought that they were providing an across-the-board right of redemption.

The “first legislature” dutifully fulfilled its obligation to provide for “speedy sales.” (See Tex. Rev. Civ. Stat. Ann. arts. 7273-7283.) Nevertheless, faulty titles caused by failure to follow the strict requirements of the law continued to be a problem. (See Miller, pp. 269-70.) In 1895 a new statute added foreclosure of tax lien followed by judicial sale. (See Tex. Rev. Civ. Stat. Ann. arts. 7326, 7328, and 7330.) There were now two statutory methods of selling land for delinquent taxes, but these covered only state and county taxes.

In 1898 the supreme court decided *City of San Antonio v. Berry* (92 Tex. 319, 48 S.W. 496). This was a suit for delinquent city taxes and foreclosure of a tax lien. San Antonio operated under a local law charter which gave it the power to foreclose a tax lien without a right of redemption. The property owner tried to rely upon Section 13, but the court was not persuaded. “The right of redemption which was secured to the owner by that section applies only to the ‘speedy sale’ for which the legislature was required to make provision The provision in which the right of redemption is given makes the period begin from the date of the purchaser’s deed, and the deed referred to is . . . the ‘land thus sold.’ Clearly, by ‘land thus sold’ is meant the land which was to be sold under the summary remedy which the legislature was to provide.” (92 Tex., at 328; 48 S.W., at 500.)

The legislature evidently did not approve the court’s conclusion, for in 1899 at the regular session, which convened the month following the decision, a simple law was enacted providing that all lands sold for taxes under a court decree could be redeemed by the owner within two years from the date of the deed. (See Tex. Rev. Civ. Stat. Ann. art. 1065.) Then a new problem arose. In 1905 the legislature enacted a local law charter for Houston, one of the provisions of which denied the right of redemption. In *Brown v. Fidelity Inv. Co.* (280 S.W. 567 (Tex. Comm’n App. 1926, *jdgmt adopted*)), the commission of appeals held the charter provision void because it contravened the 1899 law. The writer of the opinion did not say that even though the special charter was enacted after 1899, the legislature undoubtedly did not mean to repeal the 1899 general law as to Houston only. The writer did say a lot of things about local laws and general laws and equal rights and the requirement of the 1912 Home Rule Amendment that a home-rule charter could not have a provision inconsistent with the general laws. In short, the opinion reached the right result but not on the basis of normal statutory interpretation. This is undoubtedly the reason that the supreme court adopted only the judgment of the commission of appeals.

Special districts also went the way of cities. The statute authorizing water improvement districts contained all the usual provisions but no right of redemption except “at any time before the lands are sold.” (Originally Tex. Rev. Civ. Stat. Ann. art. 5107-50; now art. 55.613 of the Water Code.) In *Alamo Land & Sugar Co. v. Hidalgo County Water Imp. Dist. No. 2*, the court of civil appeals dutifully followed the *Berry* case by holding that Section 13 was inapplicable. (276 S.W. 949 (San Antonio 1925, *no writ*.) Again the legislature promptly provided a right of redemption for any land sold for delinquent taxes “levied by or for any district organized under the laws” (See Tex. Rev. Civ. Stat. Ann. art. 7284a.) This statute was held an unconstitutional impairment of contract as to any taxes levied to pay bonds issued prior to enactment but valid as to bonds issued subsequently. (See *Dallas County Levee Imp. Dist. No. 6 v. Rugel*, 36 S.W.2d 188 (Tex. Comm’n App. 1931, *jdgmt. adopted*.)

At this point it is appropriate to pause to note that Section 13 involved, first, problems of methods of collecting taxes—by summary sale by the tax collector or judicial sale under court order; and, second, the problem of the availability of a

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right of redemption. So far in this discussion, it has been made clear that Section 13 was considered to cover only state and county property taxes. Redemption rights existed in cities and special districts only if the legislature granted them. It also seems clear that the “first legislature” obeyed the command to provide for summary sale, but that thereafter the legislature preferred the route of judicial sales. In 1895 this route was made available for state and county taxes; in 1897 it was extended to cities, towns, and school districts. (See Tex. Rev. Civ. Stat. Ann. art. 7337. Laws still on the books but predating the 1876 Constitution authorize summary sales in cities (Tex. Rev. Civ. Stat. Ann. arts. 1041, 1058). The last sentence of another 1897 law (Tex. Rev. Civ. Stat. Ann. art. 7343) seems to authorize cities, towns, and school districts to use the summary sale procedure.)

In 1929, the legislature decided to kill off summary tax sales. A simple statute was enacted providing; “That [*sic*] all sales of real estate made for the collection of delinquent taxes due thereon shall be made only after the foreclosure of tax lien securing same has been had in a court of competent jurisdiction in accordance with existing laws governing the foreclosure of tax liens in delinquent tax suits.” (See Tex. Rev. Civ. Stat. Ann. art. 7328a. The “*sic*” is to alert the reader that the statute is a nonsentence.) The second section of the bill provided: “All laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.” (*General and Special Laws of the State of Texas*, 41st Legislature, ch. 48, sec. 2, at 103.) This lazy approach leaves all conflicting laws on the books and requires courts and lawyers to puzzle over what does conflict with the new law. Presumably, the 1929 law “repealed” the 1876 summary sale statute as amended. That statute covered only state and county property taxes. But presumably the 1929 words “that all sales” meant *all* sales and not just sales under the 1876 law.

In 1932 Section 13 itself was amended in a manner that could hardly have been more confusing. As noted in the *History* above, the words “without the necessity of a suit in Court” were added. But these words became part of a command to the “first Legislature.” That legislature went out of existence in 1879. Or was there a new command to the first legislature to meet after 1932? If somebody was trying to repeal the 1929 statute, he certainly did not know how to go about it. Section 13 was left as a command to the legislature—dead or alive—to do something. It did nothing.

The supreme court tackled the problem of the amended Section 13 in *Mexia I.S.D. v. City of Mexia* (134 Tex. 95, 133 S.W.2d 118 (1939)). It was argued that use of the judicial process to foreclose a tax lien violated Section 13 because the words “without the necessity of a suit in Court” made summary sale the exclusive method for collecting delinquent taxes. The court noted, first, that Section 13 by its own language did not appear to be exclusive, and, second, that Section 13 had to be read in conjunction with Section 15, particularly its concluding words “under such regulations as the Legislature may provide.” In the discussion of Section 15, it is noted that much of the section adds nothing to legislative power over means of collecting taxes. Nevertheless, because the quoted words were there, the court could use them to bolster its argument that amended Section 13 did not make summary sale exclusive.

Apparently this pronouncement was not effective, for in 1948 the supreme court had to go through the whole business again. The tax collector for the Pasadena Independent School District tried the summary sale device. A couple of taxpayers obtained an injunction on the ground that the 1929 statute forbade summary sales. On an appeal by the tax collector, the supreme court reviewed the matter in great detail. (*Duncan v. Gabler*, 147 Tex. 229, 215 S.W.2d 155 (1948). The opinion does not cite the statute that the tax collector relied upon. It may have been Tex. Rev. Civ. Stat. Ann. art. 7343, previously cited.) The conclusion was

that the 1929 statute is constitutional and effectively limits tax sales to judicial foreclosure after suit.

The 1932 amendment also changed the rules for redemption. The *Berry* case discussed earlier said that the right of redemption given by Section 13 covered only summary sales. The *Berry* case has frequently been distinguished but never overruled. This raises an interesting question. In the case of judicial sales, does the legislature have full power to deny any period of redemption, to make the period shorter, or to increase the redeemer's cost above that set forth in Section 13? If the *Berry* case is good law, there is no constitutional guarantee of the right of redemption. It is inconceivable that the drafters of the 1932 amendment and the voters who ratified it at the depth of the Depression thought that they were engaging in an idle gesture. Surely they thought that they were helping delinquent taxpayers redeem their property at a lower cost than "double the amount of money paid for the land," as Section 13 had previously provided. So far the question raised remains theoretical; the right of redemption now granted is apparently the same as set forth in Section 13. (See Sec. 12, Tex. Rev. Civ. Stat. Ann. art. 7345b. Interestingly enough, the two redemption statutes mentioned earlier—Tex. Rev. Civ. Stat. Ann. art. 1065 for cities and Tex. Rev. Civ. Stat. Ann. art. 7284a for special districts—are still on the books with "double the amount paid" required to redeem. They have been "repealed" presumably by the enactment of Tex. Rev. Civ. Stat. Ann. art. 7345b.)

Comparative Analysis

Several states have provisions prohibiting the *exemption* of property from sale for nonpayment of taxes. Several states also make it clear that the homestead exemption does not cover tax sales. Prior to 1970, Illinois also had an affirmative provision. The 1970 Convention turned the provision into a simple prohibition: "Real property shall not be sold for the non-payment of taxes or special assessments without judicial proceedings." (Art. IX, Sec. 8(a).)

The right of redemption appears to be guaranteed in four states. The verb "appears" is appropriate because anyone reading Section 13 would say that Texas guarantees the right of redemption. It is possible that one of the other states has a *Berry* case floating around. The *Model State Constitution* has nothing on either tax sales or redemption.

Author's Comment

There are enough morals in the story of Section 13 to fill a book of fables. Moral No. 1: Badly drafted constitutional provisions breed bad court decisions. One must read the intent of the 1875 Convention, poorly expressed as it was, as guaranteeing a right of redemption. The *Berry* case represents a literal reading of Section 13, not a reading of the intent behind the words.

Moral No. 2: Beware of using "provided that." Properly used, "provided that" expresses a condition that must be met before the main proposition is effective. For example, "I bequeath my library to my son provided that he survives me." (There may be such a proper use in the Texas Constitution, but it is a needle-in-a-haystack chore to find it.) In the Texas Constitution, "provided that" frequently means "but," "except that," "also," and even "oh, and here is another idea." If, in the case of Section 13, "provided that" was properly used to mean that any "speedy sale" statute had to include a right of redemption, then the *Berry* case was correct if it was correct in equating "speedy sale" with "summary sale." (See the *Duncan* opinion where the court repudiated this very equation.) But if, as seems more likely, "provided that" meant "also," then *Berry* was wrong.

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Moral No. 3: Think before you amend. How anyone could have amended a provision and left it reading "Provision shall be made by the first Legislature" is beyond comprehension.

Moral No. 4: Read the cases before you amend. The 1932 amendment of the redemption proviso must have been based on the assumption that the existing proviso guaranteed a right of redemption. Even a quick reading of the *Berry* case would have alerted a drafter to start over; "Any owner of property sold for non-payment of taxes may redeem the property . . .," etc.

Moral 5: Do not command the legislature to pass statutes. It may not work because the legislature may not act.

Moral No. 5a: If you must command the legislature to pass a statute, do not include too much advice. Section 13 would have been relatively harmless if it had read: "The Legislature shall provide by general law for the sale of property for non-payment of taxes. Such law shall provide for a right of redemption within two years following such sale." (For an exercise in puzzling over the meaning of details, compare the wording of (1) and (2) of Sec. 13 with the wording of (1) and (2) of Sec. 12 of Tex. Rev. Civ. Stat. Ann. art. 7345b.)

Sec. 14. ASSESSOR AND COLLECTOR OF TAXES. Except as provided in Section 16 of this Article, there shall be elected by the qualified voters of each county, an Assessor and Collector of Taxes, who shall hold his office for four years and until his successor is elected and qualified; and such Assessor and Collector of Taxes 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.

History

The 1845 Constitution provided that the "Assessor and Collector of Taxes shall be appointed in such manner, and under such regulations as the Legislature may direct." (Art. VII, Sec. 29.) No change was made in 1861 or 1866. The Reconstruction Constitution of 1869 provided that the justices of the peace should assess the property in their precinct and that the sheriffs should collect the assessed taxes in their respective counties. (Art. XII, Sec. 28.) After the democrats gained control of the legislature in 1873, an amendment was proposed and adopted the same year providing that at the next general election and every four years thereafter an assessor and collector of taxes was to be elected in each organized county.

In the 1875 Convention, the majority report of the Committee on Revenue and Taxation provided for an elected assessor in each county; the minority substitute accepted by the convention for debate also provided for a county assessor but left it to the legislature to decide whether he should be elected or appointed. During debate a number of amendments were offered covering both this section and Section 16. (See *Journal*, pp. 468-69, 540. See also *Debates*, pp. 309-10.) The version finally agreed upon was:

There shall be elected by the qualified electors of each county at the same time and under the same law regulating the election of State and county officers, an Assessor of Taxes, who shall hold his office for two years and until his successor is elected and qualified.

In 1932 the section was amended to change "Assessor" to "Assessor and Collector" and to add the words following the semicolon in the current version. (Sec. 16 was amended at the same time.)

In 1954 the section was amended to increase the term of office to four years.

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That amendment also added the opening "Except" clause and dropped the phrase concerning time of election.

Explanation

As the section now stands it is relatively self-explanatory. Between 1932 and 1954, Sections 14 and 16 were contradictory because Section 14 said that there should be an assessor and collector elected in "each" county but Section 16 said that the sheriff should be "the" assessor and collector of taxes in each county except those with a population of 10,000 or more. Since the 1932 amendments of Sections 14 and 16 were submitted to the voters as a single vote for or against "combining into one office of Assessor and Collector of Taxes, the offices of Assessor and Tax Collector," it was obvious what was intended notwithstanding the contradictory language. The 1954 amendment corrected the error by adding the "Except" clause. Even so, the correction ended up only partially correct. It ought to read "Except as provided in Sections 16 and 16a of this Article."

The only significant interpretation of this section is an attorney general's opinion issued in 1971 (Tex. Att'y Gen. Op. No. M-986). The question posed to him was whether a county with over 10,000 population could enter into a contract with a city within the county whereby the city's tax assessor would assess property within the city for county taxes. In practical terms, the question was whether the county assessor could use the valuations determined by the city assessor. The attorney general held that Section 14 prohibited such a contract but did not prohibit a "contract for services, such as the making of appraisal *recommendations*, that would not constitute an abrogation of the duties of the county assessor-collector *granted* by the Constitution." (Italics supplied; duties are imposed, not "granted.") It seems obvious that permitting the county assessor-collector to rely upon the "recommendations" of the city assessor-collector reaches the same result as a contract to provide the actual valuations. (For a detailed analysis of the attorney general's opinion, see the *Author's Comment* on this section.)

It would appear to be obvious that local governments with power to levy property taxes could be authorized to provide their own assessor-collector. But as late as 1965, a court of civil appeals had to brush aside a claim that a school district had to use the county assessor-collector (*Jackson v. Maypearl I.S.D.*, 392 S.W.2d 892 (Tex. Civ. App.—Waco 1965, *no writ*)). Still more recently the attorney general has ruled that a school district may designate the county assessor-collector as its agent to assess and collect taxes and may direct him to assess at a higher percentage of market value than he uses for county assessments. (Tex. Att'y Gen. Op. No. M-859 (1971). This is all pursuant to statute. Education Code sec. 23.94.)

Comparative Analysis

Approximately ten states mandate the election of a county tax assessor. One of those, Montana, provides in its 1972 Constitution for the continuation of traditional county government, including election of an assessor, but also provides for alternative forms of county government that would permit elimination of the elected assessor.

No other state has a constitutional county assessor-collector. Three states make the sheriff *ex officio* collector, but two of them, Arkansas and West Virginia, have unless-otherwise-provided-by-law qualifications and the third, Louisiana, excepts Orleans Parish. Colorado and Montana provide that the county treasurer shall be the tax collector. (But note the Montana change described above.) Florida's constitution provides for the election of the county tax collector. Mississippi permits the legislature to determine the manner of selection of the collector.

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Many of the other states may have elected assessors or tax collectors, or both, but not with constitutional status. For example, Idaho provides that taxes shall be collected by an officer or officers designated by law. The *Model State Constitution* does not provide for named county officers.

Author's Comment

The attorney general's opinion discussed in the *Explanation* above leaves much to be desired. In the first place, a county attorney requested an opinion on whether H.B. 646, passed March 20, 1971 (Tex. Rev. Civ. Stat. Ann. art. 4413 (32c)), authorized the contract described above. Instead of addressing himself to the statute, the attorney general quoted Section 14 and then turned to the 1907 supreme court opinion that upheld the Intangible Assets Act. In the course of permitting a state board to supersede local assessors in determining the total value of a railroad's property in the state, the court said, in passing, that "we think that the Legislature could not strip the assessor of all authority, and probably that it was intended by the framers of the constitution that all ordinary assessments of property for taxation should be made by him. . . ." (*Missouri, K. & T. Ry. Co. v. Shannon*, 100 Tex. 379, 391, 100 S.W. 138, 142 (1907).) Relying upon this quotation, the attorney general concluded that the proposed contractual arrangement would be unconstitutional. He then said: "For the above reasons, House Bill No. 646 does not authorize a county to contract away the duty of its elected tax assessor and collector to make ordinary assessments of property for taxation purposes."

Although the question asked was framed in terms of the statute, the opinion bypassed it on the way to the constitutional issue. H.B. 646, "The Interlocal Cooperation Act," authorizes contracts whereby one local government may perform, among other things, an "administrative function" for another local government. "Administrative functions" are defined as "functions normally associated with the routine operation of government such as tax assessment and collection . . . [etc.]" (Sec. 3(3).) It is clear that the proposed contract came within the statute which would mean that the constitutional issue had to be faced. Unfortunately, failure to analyze the statute may have led the attorney general into a faulty analysis of Section 14.

Although the attorney general quoted Section 14, he did not analyze it. Instead, he quoted the *Shannon* opinion. But the Section 14 that the court construed is the section set out above in the *History*. At that time the section neither mentioned "duties" nor granted to the legislature any specific power to "prescribe" such duties. These words entered the section in 1932. It would seem to follow that the *Shannon* opinion is irrelevant because whatever the "framers of the Constitution intended," their intent has been modified by the "intent" of the voters in adopting an amended Section 14 in 1932. Indeed, it can even be argued that the words "as may be prescribed by the Legislature" were "intended" to "override" the dictum in the *Shannon* case. (Note that the words quoted by the attorney general not only were not part of the holding of the court, they were in contradiction to the upholding of a statute that took some of the power of assessment away from assessors.)

Construing Section 14 is not an easy matter. A constitution frequently creates a constitutional office and provides that the officer shall perform "such duties as may be prescribed by law." (See Art. V, Sec. 23; Art. VII, Sec. 8.) Sometimes a provision will set forth certain duties and add "and such other duties as may be prescribed by law." (See Art. V, Sec. 21.) The wording of Section 14 may be unique, for it states that the assessor-collector shall perform "all duties with respect to assessing property . . . and of [sic] [to] collecting taxes, as may be prescribed by the Legislature."

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Presumably, Section 14 means that the legislature may prescribe the duties of the assessor-collector of taxes. In other words, "all" is to be disregarded. If this is not the case, the phrase "as may be prescribed by the Legislature" is well nigh meaningless. (It is only fair to note that the attorney general disagrees. See Tex. Att'y Gen. Letter Advisory No. 117 (1976).)

If, then, the duties of the assessor-collector may be prescribed by law, it would seem reasonable for the legislature to prescribe that in any case where there are two assessors and one piece of property, only one assessor is to determine the value. If this is so, the legislature can surely take the lesser step of permitting any two assessors so to agree. H.B. 646 in effect does no more than this.

It should be noted that the attorney general's opinion ends up at the same place by permitting a contract for "recommendations" by one assessor to the other. It may be that this practical resolution of the problem avoids a constitutional confusion involving Section 18. If the county assessor were to rely upon the valuation determined by the city assessor, would the property owner have to protest to both the county and city boards of equalization? What would happen if one board agreed with the property owner and the other did not? It would be neither good constitutional government nor good administration to have two independent reviewing bodies for a single administrative act. In view of the wording of Section 18, H.B. 646 can hardly authorize a county to contract with a city for board of equalization services. (H.B. 646 undoubtedly does not authorize this, for the definition quoted above refers to "routine operation of government." A board of equalization sitting as a reviewing agency to hear protests would not be considered by most people to be a "routine operation.")

If a county and city enter into a contract for "recommendations," the confusion just outlined evaporates. Each assessor makes his own valuation; each board of equalization reviews the valuation of its assessor. One may raise an eyebrow over the attorney general's reasoning yet applaud his finding as a neat, practical solution to a constitutional problem that he did not discuss.

The moral to all this is that intergovernmental cooperation can be made viable only if the constitution does not contain restrictions like those in Section 18 and in Section 14 as construed by the attorney general. (See also the *Author's Comment* on Sec. 64 of Art. III.)

Sec. 15. LIEN OF ASSESSMENT; SEIZURE AND SALE OF PROPERTY. The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

History

The Reconstruction Constitution provided: "The annual assessments made upon landed property shall be a lien upon the property, and interest shall run thereon upon each year's assessment." (Art. XII, Sec. 20.) Neither the majority nor minority reports to the 1875 Convention mentioned liens. In the course of debate, Mr. Fleming, author of the minority report, proposed to add as a new section what is now the opening third of Section 15. This was apparently accepted by voice vote. (*Journal*, p. 495.) Several days later, just before the convention engrossed the article, a delegate offered an amendment adding the remainder of the section. This apparently was also accepted by voice vote. (*Journal*, pp. 540-41.)

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Explanation

In the absence of verbatim debates of the 1875 Convention it is not possible to know why Mr. Fleming felt the need to create a constitutional lien. (Perhaps he suddenly discovered the 1869 section quoted above.) Nor is it possible to know why anybody felt that the additional two “sentences” added anything significant. (See the *Author’s Comment* on this section.)

As already noted in the *Explanation* of Section 13, our legal system permits the use of judicial process to obtain payment of a debt, including seizure of the debtor’s property. A “lien” is a device to latch onto a person’s property in advance so that he cannot dispose of it without satisfying the debt represented by the lien. The legislature does not have to provide this protection for creditors, of course, but it traditionally does so. (The statutory equivalent of Sec. 15 is Tex. Rev. Civ. Stat. Ann. art. 7172.) Indeed, the most likely step for a legislature to take is not only to create a lien for taxes but to give that lien priority over all other liens. (See Tex. Tax.—Gen. Ann. art. 1.07.)

There are many cases which cite Section 15, but most of them are not of constitutional significance. That is, they are the normal cases that would arise under a lien statute. Two cases of constitutional significance involved the relationship between Section 15 and another section of the constitution. One early case held that the lien created by Section 15 was not destroyed by the homestead protection guaranteed by Section 50 of Article XVI. (*City of San Antonio v. Toepperwein*, 104 Tex. 43, 133 S.W. 416 (1911). The problem in this case arose because of poor drafting of Sec. 50.) The other case involved the relationship between Section 15 and Section 6a of Article VII. (See *Childress County v. State*, 127 Tex. 343, 92 S.W.2d 1011 (1936).) A third case gave short shrift to an argument that the direct creation of a tax lien on real property precluded the legislature from creating a tax lien on personal property. (See *In re Brannon*, 62 F.2d 959 (5th Cir. 1933).)

Comparative Analysis

No other state creates a constitutional tax lien. For constitutional provisions concerning tax sales, see the *Comparative Analysis* of Section 13.

Author’s Comment

The first “sentence” of Section 15 is a simple, self-executing statute. The second and third “sentences” are negative statutes. Presumably, the legislature cannot pass a law stating that property of a delinquent taxpayer is *not* liable to seizure and sale. But, in the absence of a statute authorizing a suit or other action, an official could hardly proceed solely on the basis of the assertion of liability in Section 15.

Statutory material in a constitution is usually recognizable by length and detail. (See, for example, Secs. 48a, 48b, and 49b of Art. III; and Sec. 12 of Art. IX.) But length and detail are not essential. If a provision directly establishes a public policy that the legislature could establish, the provision is likely to be statutory. This is particularly true if the legislature is almost certain to adopt the policy. But, as is always the case in human affairs, the matter is not wholly black and white. For example, it is not unreasonable to include in a constitution a right of redemption for property sold for nonpayment of taxes. (See Sec. 13.) On the one hand, a legislature is not likely to deny the right of redemption. (As noted earlier, Sec. 13 was so construed by the courts that the right of redemption was not always protected.) On the other hand, protection of the homestead is sufficiently important in maintaining family stability to excuse inclusion of redemption rights as part of a constitutional homestead protection. In other words, some statutes are more fundamental than others. If the statutory policy is so fundamental that the necessity for its repeal will

never arise, there is hardly any harm in embedding it in constitutional concrete.

As noted above, the balance of Section 15 is not significant. Every step necessary for the collection of delinquent taxes could be taken without these statements of liability—and without a Section 15 or a Section 13, for that matter. This is not to say that the statements have not been used; judges and lawyers, like mountain climbers, will use anything just because it is there.

Sec. 16. SHERIFF TO BE ASSESSOR AND COLLECTOR OF TAXES; COUNTIES HAVING 10,000 OR MORE INHABITANTS. The Sheriff of each county, in addition to his other duties, shall be the Assessor and Collector of Taxes therefor; but, in counties having 10,000 or more inhabitants, to be determined by the last preceding census of the United States, an Assessor and Collector of Taxes shall be elected as provided in Section 14 of this Article, and shall hold office for four years and until his successor shall be elected and qualified.

History

Prior to the Reconstruction Constitution of 1869, assessor and tax collector was a single office. Under that constitution justices of the peace were the assessors and the sheriff was the tax collector. In 1873 an amendment was adopted, again combining the offices. (See the *History* of Sec. 14.)

In the 1875 Convention both the majority and minority reports of the Committee on Revenue and Taxation proposed to revert to the Reconstruction system of separate offices with the sheriff as the tax collector. There was considerable debate over whether the offices should be combined or separate and whether, if separate, the sheriff should be the collector. (See *Debates*, p. 309.) In the course of debate a compromise proposal to have a separate collector in the more populous counties was accepted without a recorded vote. (*Journal*, p. 469.) The original section thus read:

The Sheriff of each county, in addition to his other duties, shall be the collector of taxes therefor. But in counties having ten thousand inhabitants to be determined by the last preceding census of the United States, a Collector of Taxes shall be elected to hold office for two years and until his successor shall be elected and qualified.

In 1932 the section was amended by changing the “collector of taxes” and “Collector of Taxes” to read “Assessor and Collector of Taxes.” Several minor changes were made, the most important of which was to add “or more” after “ten thousand,” thus correcting an error in the original wording.

In 1954 the section was amended to increase the specified term of office from two years to four years. At the same time “as provided in Section 14 of this Article” was added, thus correcting the 1932 error discussed in the *Explanation* of that section. (See also the *Author's Comment* on Sec. 16a.)

Explanation

The only significant questions arising under this section have involved candidacies for office at the time of census taking. In an early case the supreme court held that a certified census enumeration of fewer than 10,000 people filed prior to election day governed. (*Nelson v. Edwards*, 55 Tex. 389 (1881).) Many years later, a man read in the paper that the population of Lubbock County had passed 10,000. He tried to file for tax collector in the primary but was too late. His name was written in by several voters, however, and his nomination certified. He then ran in the general election as a certified candidate and again won, but the sheriff refused to recognize the validity of the election. The court of civil appeals held that so long as an official

Art. VIII, § 16a

census certification is made prior to the general election, Section 16 is operative. Lubbock County was declared to have an elected assessor and collector of taxes. (*Holcomb v. Spikes*, 232 S.W. 891 (Tex. Civ. App.—Amarillo 1921, writ *dism'd*.) The legislature has recently tackled this problem of when the United States census takes effect. (See the *Author's Comment* below.)

Comparative Analysis

See *Comparative Analysis* of Section 14.

Author's Comment

Section 1 of article 29d of the *Texas Revised Civil Statutes Annotated* provides:

Neither the state nor any political subdivision or agency thereof except the Legislature shall ever officially recognize or act upon any report or publication, in whatever form, of any Federal Decennial Census, either as a whole or as to any part thereof, before the first day of September of the year immediately following the calendar year during which such census was taken. (Tex. Rev. Civ. Stat. Ann. art. 29d, sec. 1 (Supp. 1972-73).)

Section 2 states that as of the same September 1, everybody, including, presumably, the legislature, shall recognize and act upon the official census figures but goes on to provide that any figures not officially published until later are to be recognized and acted upon immediately upon publication. This version of article 29d became effective on March 11, 1971. Prior to that the statute used the date of January 1 of the year following the taking of the census and did not exclude the legislature from the operation of the statute.

In *Mauzy v. Legislature Redistricting Board*, Chief Justice Calvert, speaking for the supreme court, said: "If this statute was intended to prevent action by the Legislative Redistricting Board before September first of the year referred to on the basis of census figures theretofore published, it is ineffective in so far as it conflicts with Sec. 28, Art. III of the constitution as we have interpreted it." (471 S.W.2d 570, 575 (Tex. 1971).) The chief justice properly limited himself to invalidating article 29d only in so far as Section 28 of Article III is concerned, for that was the only constitutional provision involved in the lawsuit before the court. But the *Mauzy* case is a persuasive precedent for invalidating the statute in the case of any constitutional provision that uses a federal census as an operative event. Indeed, *Mauzy* may be an a fortiori case because Section 28 refers to "publication" of the census whereas Section 16, for example, says "determined" by the census. The United States Census Bureau presumably can control the date of "publication," but population is "determined" when the census is taken. The only open question under these circumstances is the reliability of figures as they are announced. That question also is controlled by the Census Bureau and the statute under which it operates. If the bureau certifies census figures as "final" within whatever range is adequate for a constitutional purpose, the census has been "determined." (See the extensive discussion of the census in *Cahill v. Leopold*, 141 Conn. 1, 103 A.2d 818 (1954). The Connecticut Supreme Court relied in part on the *Holcomb* case discussed earlier.)

It seems fair to conclude that any state constitutional provision tied to the decennial census can be construed only by the courts. A statute like article 29d is of no effect. Article 29d is operative, however, in the case of any purely statutory provision tied to the decennial census.

Sec. 16a. ASSESSOR-COLLECTOR OF TAXES; COUNTIES HAVING LESS THAN 10,000 INHABITANTS. In any county having a population of less than ten

Art. VIII, § 17

thousand (10,000) inhabitants, as determined by the last preceding census of the United States, the Commissioners Court may submit to the qualified property taxpaying voters of such county at an election the question of adding an Assessor-Collector of Taxes to the list of authorized county officials. If a majority of such voters voting in such election shall approve of adding an Assessor-Collector of Taxes to such list, then such official shall be elected at the next General Election for such Constitutional term of office as is provided for other Tax Assessor-Collectors in this State.

History

This section was added in 1954. It was voted upon separately from the omnibus amendment increasing the terms of district, county, and precinct offices from two years to four years. This explains the odd wording at the end of the second sentence.

Explanation

There do not appear to have been any interpretations of this section. Thus, it is not known whether the question of offering the voters the choice of having a separate assessor-collector is the prerogative of the commissioners court. Presumably it is because of the word "may." There is also ambiguity about the "election." The first sentence states that the question, if submitted, is to be "at an election." This could be, presumably, either a special election or a regular election. The operative words in the second sentence are "majority of such voters voting in such election." Does this mean that if the election is a regular one, the majority required is of those voting or only of those voting on the question? There is an implementing statute, but it provides only that after a favorable vote the commissioners court "in its discretion may" fill the office by appointment until the next general election. (Tex. Rev. Civ. Stat. Ann. art. 7246-1/2 (Supp. 1972-73). Presumably, "in its discretion" means that "may" means "may" and not "shall.")

It also is not known whether there is any significance to the absence in Section 16a of any words about duties of an assessor-collector. Does the legislature have more, the same, or less power to prescribe the duties of an assessor-collector for a county of "less than 10,000 inhabitants" than it has for a county of 10,000 or more? (See the *Author's Comment* on Sec. 14.)

Comparative Analysis

See *Comparative Analysis* of Section 14.

Author's Comment

It was noted in the *History* above that this section does not spell out the term of office because no one could know in advance whether the voters would approve the general increase in term of office from two to four years. For a discussion of the problem of interrelated amendments voted upon simultaneously, see the *Author's Comment* on Section 1-c of this article. It also is worth noting that, absent the problem of interrelated amendments, Sections 14, 16, and 16a could have been combined into one section.

Sec. 17. SPECIFICATION OF SUBJECTS NOT LIMITATION OF LEGISLATURE'S POWER. The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this Constitution.

Art. VIII, § 18

History

This section dates from 1876. It was one of the sections in the substitute article submitted by a dissenting member of the Committee on Revenue and Taxation. (See *Introductory Comment*.) This section and Section 3 are the only ones that remained unchanged after the delegates accepted the substitute article.

One interesting sidelight is that Section 17 is exactly the same as a section in the 1870 Constitution of Illinois except for the addition of the words "or objects." In turn, the Illinois section was exactly the same as a section in the 1848 Constitution of Illinois except that "objects or" appeared in the 1848 instrument preceding "subjects." (The new 1970 Illinois Constitution omits the provision.) No other constitution contains a comparable provision.

Explanation

This is either an unnecessary or an indispensable provision. It is unnecessary if everyone understands that a legislature has plenary taxing power except for such limitations as are contained in the constitution. It is indispensable if some people think that taxing power has to be granted to the legislature. If, as is the case in the Texas Constitution, fuzzy drafting produces a mixture of granting words and limiting words, a Section 17 helps to knock down arguments against a new form of taxation. (See *American Transfer & Storage Co. v. Bullock*, 525 S.W.2d 918 (Tex. Civ. App. — Austin 1975, writ *ref'd*); *State v. Wynne*, 134 Tex. 455, 133 S.W.2d 951 (1939); *Missouri, K. & T. Ry. v. Shannon*, 100 Tex. 379, 100 S.W. 138 (1907).)

Comparative Analysis

As noted earlier in the *History*, no other state has a provision like this.

Author's Comment

If the drafters of a revised revenue and taxation article were to assume the power to tax and to restrict the article to limitations on that power, a Section 17 would obviously be unnecessary.

Sec. 18. EQUALIZATION OF VALUATIONS; CLASSIFICATION OF LANDS. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, (the County Commissioners' Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

History

This section dates from 1876. The original section as proposed by the Committee on Revenue and Taxation of the 1875 Convention read as follows:

The sheriff, county clerk and chief justice shall compose a board of equalization in each county, to hear appeals by property holders and determine the just value of the property rendered for taxation. (*Journal*, p. 383.)

The minority substitute contained the same section. (*Id.*, at 424.) On second reading, the following took place:

Mr. Ferris offered the following substitute for Section 14:

'Sec. 14. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, by creating a board or boards of equalization, and it may also provide for the classification of all lands with reference to

their value in the several counties.'

Mr. Pauli proposed to amend Section 14 by striking out the words 'the Sheriff, County Clerk and Chief Justice shall compose,' and insert 'the Commissioners' Court in open session shall act as,' also insert after the word [sic] 'property holders' the words 'or the Assessor.'

Mr. Ferris's substitute was adopted. (*Id.*, at 496.)

The *Journal* is silent on how Mr. Ferris's Section 14 was changed to what is now Section 18.

Explanation

Section 18 is an utterly confused combination of apples and oranges. The original proposal as amended by Mr. Pauli created a constitutional agency to which a taxpayer—or assessor—could appeal if he felt that the assessor had not properly assessed the property. Mr. Ferris proposed to require the legislature to set up a system for statewide equalization (Mr. Ferris's intention would have been clearer if he had left out "or boards." See the *Author's Comment* that follows.) This is a different matter altogether. A state board could require that all counties use the same standards for assessment. In other words, it would be possible to prevent a situation where county "A" assessed at 20 percent of market value, county "B" at 30 percent, county "C" at 40 percent, and so on. (The significance of this is discussed in the *Author's Comment* below.)

One way to read the confusion of Section 18 is that the legislature is commanded to take steps to equalize property assessments but, in the case of county assessments, the commissioners court must be the agency that does whatever the legislature authorizes. This is what happened. Chapter Seven of Title 122—Taxation—deals with county assessments and assessors and prescribes the powers and duties of the commissioners court as a board of equalization. (See *Tex. Rev. Civ. Stat. Ann. art. 7206 (1960)*.) In the case of other taxing units, any board of equalization provision is part of the substantive statute. (For example, see *Tex. Rev. Civ. Stat. Ann. art. 1048 (1963)* for general law cities and towns; *Education Code sec. 23.93 (1972)* for independent school districts; and *Water Code sec. 51.571 (1972)* for Water Control and Improvement Districts.) Home rule cities provide for a board of equalization in their charters. (See *Forwood v. City of Taylor*, 147 *Tex. 161*, 214 *S.W.2d 282 (1948)*.) On the state level there is a board that collects property information concerning common carriers for the purpose of allocating intangible property among the counties in which the carrier operates. (See *Explanation of Sec. 8*.)

The concluding half of Section 18 is especially mystifying. As noted in the *Explanation* of Section 1, however one reads that section, property cannot be classified for purposes of taxing at different rates. Hence, there hardly seems to be any constitutional significance in providing "for the classification of all lands with reference to their value." In any event there does not appear ever to have been a case construing this power. The original implementing statute states that the commissioners court, acting as a board of equalization,

... shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second-class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small value or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible. (*Tex. Rev. Civ. Stat. Ann. art. 7206 (1960)*.)

This does not seem to mean anything and probably simply represents some

Art. VIII, § 19

draftsman's effort to exercise the power granted in Section 18 in a way that raised no questions under Section 1. The only annotated cases referring to the statutory language brush it aside as unimportant. (See *State v. Mallet Land & Cattle Co.*, 126 Tex. 392, 88 S.W.2d 471 (1935); *Taylor v. Alanreed I.S.D.*, 138 S.W.2d 149 (Tex. Civ. App. – Amarillo 1940, *no writ.*)

Comparative Analysis

Four states make the county governing body a board of equalization, but one of them, California, permits a county to substitute a board of appeals. All of these states also provide for a state board to equalize taxes among the counties. An additional four states also create such a state board. Another five states call for statewide equalization to be provided for by law. One of these is Montana. Prior to the adoption of its 1972 Constitution, Montana had a constitutional state board and a county board consisting of the county commissioners.

Author's Comment

The confused nature of Section 18 is all the more mystifying in light of the following resolution offered early in the 1875 Convention:

Resolved, that the following provision be incorporated in the constitution, viz: 'There shall be a State board of equalization, consisting of the Governor, Comptroller and State Treasurer. The duty of said board shall be to adjust and equalize the valuation of real and personal property among the several counties in the State, and it shall perform such other duties as may be prescribed by law.' (*Journal*, p. 86.)

It could be that the 1875 delegates thought that Section 18 permitted such a state board. But since the early legislatures that implemented the new constitution did nothing, it may be that the confused wording of Section 18 was actually designed to discourage statewide equalization.

There are many reasons for requiring statewide equalization. If there is a state property tax, local assessing units can play games for their taxpayers by assessing at a lower ratio to market value than other units do. If the state uses assessed property values as part of a formula for distributing state aid, the formula is skewed if the several taxing units use different assessment ratios. If partial tax exemptions are granted on the basis of so many dollars of assessed value, the exemption differs in value to property owners depending upon the assessment ratio and the tax rate. That is, a person with a partial exemption is better off with a \$2 tax on an assessment at 10 percent of market value than he would be with a \$1 tax on an assessment at 20 percent of market value.

Up to now the state has not sought to impose a system of statewide equalization of assessments. For the reasons just given, the state ought to move in this direction. Section 18—as well as the words “which shall be ascertained as may be provided by law” in the second sentence of Section 1—provides ample constitutional authority for the legislature to act.

Sec. 19. FARM PRODUCTS AND FAMILY SUPPLIES; EXEMPTION. Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by two-thirds vote of all the members elect to both houses of the Legislature.

History

This section has the dubious honor of being the first amendment to the 1876

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Constitution. The amendment was proposed by the 16th Legislature at the regular session in 1879 and was adopted at a special election on September 2, 1879. (It is interesting to note that the third edition of Sayles, *The Constitution of Texas*, printed in 1888, omits Sec. 19 but includes the amendments adopted in 1883.)

Explanation

In 1879 Texas was in the throes of an economic depression. In order to off-set some of the effects of this depression, Article VIII, Section 19 was added to the constitution to exempt farm products, and incidentally family supplies, from all taxation at least temporarily. This could only be accomplished by an amendment because of the proviso in Article VIII, Section 2 declaring "... all laws exempting property from taxation other than the property mentioned above shall be null and void."

The general exemption provision of the constitution, Article VIII, Section 2, permits the legislature to exempt certain property from taxation. This is a mere authorization, and there is no exemption until the legislature has acted in pursuance of this authority. On the other hand, this provision of the constitution declares that farm products and family supplies are tax-exempt, and this is a self-executing provision which needed no legislation to make the exemptions effectual.

Exemption provisions are usually the cause of heated debate for they favor one group of taxpayers over all others. This is particularly true of this section, for farmers here receive benefits which no other producer of goods or services in the state can claim. Therefore, in order to secure passage of the amendment, it was agreed that a stipulation would be included permitting the legislature to recall the exemption when the immediate need therefor had passed. Although various attempts were made to secure the enactment of such legislation, to date they have met with no success. (Art. VIII, Sec. 19, *Interpretive Commentary*.)

There is little to add to the foregoing. A lumber company tried to get under the exemption by arguing that modern methods of forest development, known as "tree farming," converted its lumber into farm products. The argument was unsuccessful. (*Kirby Lumber Corp. v. Hardin I.S.D.*, 351 S.W.2d 310 (Tex. Civ. App.—Waco 1961, *writ ref'd n.r.e.*.) Equally unavailing was the effort of a nurseryman to get an exemption for his trees, shrubs, and rose bushes. (*City of Amarillo v. Love*, 356 S.W.2d 325 (Tex. Civ. App.—Amarillo 1962, *writ ref'd n.r.e.*.) The attorney general recently ruled that livestock and poultry are not farm products. (Tex. Att'y Gen. Op. No. H-898 (1976).) On several occasions he has held that a farmer's produce is still in his "hands" even if stored elsewhere so long as he continues to own it. (See Tex. Att'y Gen. Op. Nos. M-632 (1970), V-511 (1948), V-193 (1947), O-5404 (1943), O-5091 (1943).) He has also said that "family supplies for home and farm use" are "consumable articles reasonably necessary for day-to-day use in operating or maintaining a farm or home." (Tex. Att'y Gen. Op. No. WW-1025 (1961), quoted with approval in Tex. Att'y Gen. Op. No. H-898 (1976).)

It is clear from the *Interpretive Commentary* quoted above and from the various opinions interpreting Section 19 that the "taxation" referred to is assumed to be ad valorem property taxation. But the exemption embraces "all taxation." What, if anything, this means is unknown. There are not many taxes that can be levied on farm products in the hands of the producer or family supplies for farm and home use. (Whether "home" means only a home on a "farm" or any "home" is also unknown.) It could be argued that no sales tax may be levied on family supplies and that no inheritance tax may be levied on the passing of ownership of the supplies. The latter seems de minimis and the former partially moot because of existing

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exemptions in the sales tax law. (Food and many farm items are exempt. See Tex. Tax.—Gen. Ann. art. 20.04.)

Comparative Analysis

Several states have comparable farm produce provisions, but none exactly like Section 19. The Louisiana exemption is much the same but without the legislative power to remove the exemption. (Art. VII, Sec. 21(c)(11).) Tennessee exempts the produce in the hands of the farmer and his immediate vendee. (Art. II, Sec. 28.) Kentucky exempts produce grown in the year in which assessment is made. (Sec. 170.) California and Oklahoma exempt growing crops. (Art. XIII, Sec. 1, and Art. X, Sec. 6, respectively.) Georgia authorizes the legislature to exempt farm products in the producer's hands, but not for longer than the year following production. (Art. VII, Sec. 1, Para. 4.) West Virginia simply permits exemption by law. (Art. X, Sec. 1.) Obviously, the states mentioned have these exemption provisions only because of a general constitutional prohibition against exemptions. Absent such a general prohibition, a legislature may create all sorts of statutory exemptions. (See *Comparative Analysis* of Sec. 2.)

Author's Comment

See the *Author's Comment* on Section 2.

Sec. 20. FAIR CASH MARKET VALUE NOT TO BE EXCEEDED; DISCOUNTS FOR ADVANCE PAYMENT. No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its fair cash market value; provided that in order to encourage the prompt payment of taxes, the Legislature shall have the power to provide that the taxpayer shall be allowed by the State and all governmental and political subdivisions and taxing districts of the State a three per cent (3%) discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent; and the taxpayer shall be allowed a two per cent (2%) discount on said taxes if paid sixty (60) days before said taxes would become delinquent; and the taxpayer shall be allowed a one per cent (1%) discount if said taxes are paid thirty (30) days before they would otherwise become delinquent. This amendment shall be effective January 1, 1939. The Legislature shall pass necessary laws for the proper administration of this Section.

History

This section was added in 1937. Why it was put together this way—see the *Explanation*—and why the “fair cash market value” part was proposed at all are probably explained in some archive somewhere. None of the published historical material sheds any light on this most unusual mishmash.

Explanation

The first sentence of the section contains two totally unrelated ideas tied together by a wholly irrelevant “provided that.” (“Provided that” and variations thereof are poor drafting devices frequently used in the Texas Constitution, but normally the conjunction is reasonably relevant.) The second and third sentences represent a masterpiece in constitutional obfuscation.

The first part of the first sentence is a ringing bill-of-rights-like declaration against evil, especially with “ever” inserted between “shall” and “be.” (One has the

feeling that some legislator was frightfully angry at some board of equalization somewhere in the state; it is inconceivable that there was any general practice of overassessing all property.) But why was the effective date pushed ahead for almost 18 months? Obviously, one would say, delay was necessary to give the legislature time to act according to the third sentence. But this assumes, first, that the governor would call a special session in 1938, and, second, that the flat prohibition of the first part of the first sentence requires some kind of statutory implementation. Well then, it may be argued, the second and third sentences are related only to the second part of the first sentence. The difficulty here is, first, that it requires arguing that somebody was afraid that the governor would call a special session in 1938 to provide for discounts on taxes payable in 1938, and, second, that the final word, "Section," refers only to the discount part of the first sentence.

Interestingly enough, the second and third sentences appear to have caused no problems. Prior to the adoption of Section 20, there was a statutory provision telling assessors how to value property, including language apparently inconsistent with Section 20. The provision has never been changed and the courts appear to have gone along as if nothing had happened. The statute (Tex. Rev. Civ. Stat. Ann. art. 7211 (1960)) provides that the assessor shall be guided by the "reasonable cash market value," but if "property shall be found to have no market value," it may be assessed at its "real or intrinsic value." Cases which have arisen since 1938 have construed Article 7211 without mentioning Section 20. (See *Harlingen I.S.D. v. Dunlap*, 146 S.W.2d 235 (Tex. Civ. App.—San Antonio 1940, writ *ref'd*); *Superior Oil Co. v. Sinton I.S.D.*, 431 S.W.2d 383 (Tex. Civ. App.—Corpus Christi 1968, no writ).)

The second half of the first sentence is easy to explain. In 1934 the legislature adopted a statute providing for discounts for prompt payment of taxes. (Tex. Laws 1934, Ch. 10, sec. 1, at 36.) In 1935 the supreme court invalidated the statute for obscure reasons involving Sections 1, 1-a, 2, and 9 of Article VIII and what is now Subsection (b) of Section 52 of Article III. (*Rowan Drilling Co. v. Sheppard*, 126 Tex. 276, 87 S.W.2d 706 (1935).) In 1939 the invalid statute was repealed in favor of a statute tracking the wording of the newly adopted amendment. (Tex. Rev. Civ. Stat. Ann. art. 7255b (1960).) The only significant construction of the new statute was a holding that a city could not provide that the discount was unavailable if any property taxes were delinquent. (*City of Taylor v. Taylor Bedding Mfg. Co.*, 215 S.W.2d 215 (Tex. Civ. App.—Austin 1948, writ *ref'd*).

Comparative Analysis

Only one state, South Dakota, prohibits assessments in excess of actual value. (Art. XI, Sec. 2.) About half a dozen states specify assessment at full cash value. Michigan states that assessed valuation is not to exceed 50 percent of value, Oklahoma not in excess of 35 percent. (Art. IX, Sec. 3, and Art. X, Sec. 8, respectively.) Washington provides that assessment is to be at 50 percent of value. (Art. VII, Sec. 2.) No other state appears to have a constitutional discount schedule for prompt payment.

Author's Comment

The market value part of this section seems wholly unnecessary. The discount part should be unnecessary and would become so if the taxation provisions were rationalized and simplified so that ingenious lawyers and judges could not dream up esoteric reasons for invalidating such a sensible business practice as giving a modest discount for prompt payment.