



GERALD C. MANN

~~JOHN BEN SHERMAN~~
ATTORNEY GENERAL

**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

S-214
structure conflict

March 16, 1939

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-378

Re: What is the meaning of the word
"charge" as used in Article
7047f, R.C.S.?

Our attention is directed to Article 7047f (a), Revised Civil Statutes, which reads as follows:

"Every person, firm, or corporation conducting a theatre, place of amusement, or any business enterprise in connection with the operation of which a prize in the form of money or something of value is offered or given to one or more patrons of such theatre, place of amusement, or business enterprise, and not given to all patrons thereof paying the same charge for any certain service, commodity, or entertainment, shall make a verified monthly report on the twenty-fifth day of each month of the Comptroller of Public Accounts of the State of Texas, showing the amount of money so given in prizes, and the value of all prizes or awards so given in connection with such business during the next preceding month."

Article 7047f (b) then provides for a 20% tax on such prizes.

Since, under the express terms of Article 7047f, (a), no tax is due where the person receiving the prize has paid a charge additional to that paid by other patrons, it becomes necessary in every instance to ascertain whether such additional "charge" has been paid within the meaning of the statute.

In order to avoid the necessity of requesting our opinion on each individual case as it arises, you request our opinion as to the meaning of the word "charge" as used in the foregoing Article.

The word under consideration has many different meanings. There is the charge of the court. There was Pickett's famous charge, and that of the Light Brigade. A man bequeaths a piece

of land to a daughter, but there is a charge against it in favor of a son. A jailer has charge of a group of citizens against each of whom is a serious charge brought by the grand jury. One man is charged with the duty of administering to another a charge of electricity that will eliminate the victim as a charge upon society. There follows a burial charge.

We quote from Reese v. Pennsylvania R. Co., 6 L.R.A. 529 Pa., as follows:

"Charge" is a word of very general and varied use. Webster gives it thirteen different meanings, none of which, however, expresses the exact sense in which it is used in this charger. The great dictionary of the Philological Society, now in course of publication, gives it twenty separate principal definitions, besides a nearly equal number of subordinate variations of meaning. Of these definitions one (10 b) is: 'The price required or demanded for service rendered, or (less usually) for goods supplied,' and this expresses accurately the sense of the word in the present case. The essence of the meaning is that it is something required, exacted or taken from the traveler as compensation for the service rendered, and, of course, something taken permanently, not taken temporarily and returned."

Since the above opinion, Webster has expanded his vocabulary and his New International gives the word twenty three different meanings, of which Number Twelve is about the same as the definition embodied in the above case.

In general usage the word "charge" has one meaning which is about the same as "consideration" (when such last mentioned word is used in connection with contracts). We think the word "consideration" could have been used in the statute here involved without any change in meaning.

The word as so used might include money, or any other article of value. It might include skilled or unskilled labor, a poem, essay or motto. It could be a painting or other piece of art. In short, anything of value would suffice. On the other hand, the delivery of something of no value or the performance of merely a perfunctory act, such as signing a name to a register involving no obligation, would not be sufficient. It must be a bona fide consideration passing the receiver to the given of the prize, a consideration not

Hon. Geo. H. Sheppard, March 16, 1939, Page 3, O-373

received by the giver from other patrons of his business.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ Glenn R. Lewis

By Glenn R. Lewis
Assistant

GRL:N/cg

APPROVED

s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS