OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-1185
Re: Whether prize given by Aztec Furniture Company is subject to 20% tax levied by Article 7047f, R. C. S.

We received your letter of July 20, 1939, wherein you submit to us the following fact situation:

In a contest promoted by Aztec Furniture Company first, second, third and fourth prizes are given, the first prize being an automobile. An entry blank must be secured from Aztec Furniture Company, but such blank may be obtained for the entrant by some other person. Visitors to Aztec Furniture Company are given five free votes, regardless of whether they make a purchase. Additional votes are given to purchasers from the store at the rate of one vote for each ten-cent purchase. Votes may be cast in person or by letter or post card sent through the mail. There is no requirement that the contestant be a patron or customer of Aztec Furniture Company, nor are the rules such as would make it practically necessary for him to be a customer or patron. The contestant receiving the greatest number of votes receives the first prize. Second, third and fourth prizes are given to those receiving second, third and fourth largest number of votes, respectively. You request our opinion as to whether or not the prizes or awards thus given are subject to the 20% tax levied by Article 7047f, R. C. S.

Subdivision (a) and the first sentence in subdivision (b) of said Article 7047f, R. C. S., read as follows:

NO COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

(a) 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 to 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.

(b) There is hereby levied a tax equal to twenty per cent (20%) of the value of all such money, prizes, and awards given in connection with the operation of each and all of the foregoing business enterprises, and at the time of making the report to the Comptroller of Public Accounts, the owner or operator of any such business shall pay to the State Treasurer such tax upon the total amount of money, prizes, and awards so given during the next preceding month....."

From a reading of the above statute it is noted that for the tax to be due, the prize must be 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 the commodity or entertainment. As used in this statute we think the word "patron" has the same meaning as the word "customer". We do not believe that mere entrance into the contest in the manner provided would constitute one a patron or customer of Aztec Furniture Company. If the statute had so intended, it is submitted that the same result would have been accomplished by simply levying the tax upon the giving of the prize in connection with the operation of the place of business, without mentioning patrons of such place of business. The statute was not meant to levy the tax upon all gifts and prizes, but only upon those falling within the terms of the statute. That part of the statute providing that the prize shall be given to patrons of the business enterprise is not met, and our answer to your question is therefore a

negative one.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Glenn R. Lewis
Glenn R. Lewis
Assistant

GRL-MR

APPROVED SEP 9, 1939
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY BWB.
CHAIRMAN