



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Charley Lockhart  
State Treasurer  
Austin, Texas

Dear Sir:

Opinion No. O-3212

Re: Whether a mechanic's lien given by a farmer on his farm and securing the payment of a amount due for drilling irrigation well, installation of turbine pump motor, and otherwise equipping the place as an irrigation farm must be stamped under the provisions of Article 7047e, Vernon's Annotated Civil Statutes.

In your letter of February 24, 1941, you submit to us the following question:

"Quite a number of farmers are giving mechanic's and materialman's liens on their farms, securing the payment of the amount that will be due for drilling of an irrigation well, installation of turbine pump, motor, and otherwise equipping it as an irrigation farm. Are these instruments exempt from the State Note tax?"

The first paragraph in Section a of Article 7047e, Vernon's Annotated Civil Statutes, reads as follows:

"(a) Except as herein otherwise provided there is hereby levied and assessed a tax of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, on all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the

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office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion that said property in Texas bears to the total value of the property securing the obligation; and, providing further that, except as to renewals or extensions of accrued interest, the provisions of this section shall not apply to instruments therefore stamped under the provisions of this Act or the one amended hereby, and shall not apply to instruments given in the refunding of existing bonds or obligations where the preceding instrument of security was stamped in accordance with this Act or the one amended hereby; provided further that the tax levied in this Act shall apply to only one instrument, the one of the greatest denomination, where several instruments are contemporaneously executed to secure one obligation; and provided further that when once stamped as provided herein, an instrument may be recorded in any number of counties in this State without again being so stamped. This section shall not apply to instruments, notes, or other obligations taken by or on behalf of the United States, or of the State of Texas, or any corporate agency or instrumentality of the United States, or of the State of Texas in carrying out a governmental purpose as expressed in any Act of the Congress of the United States or of the Legislature of the State of Texas, nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products, or to livestock or farm implements, or an abstract of judgment."

As you will note from a reading of the above, mechanic's lien contracts are within the statute. We presume that the instruments to which you refer are written contracts filed under Section 1 of Article 5433, R. C. S. or in compliance with Article

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5460, R. C. S. Such instruments clearly fall within the meaning of the term "mechanic's lien contract" as used in the statute quoted above. Said Act provides that "except as hereinafter provided no such instrument shall be filed or recorded . . . until there has been affixed to such instrument stamps in accordance with the provisions of this section." Reading down into the Act we find nothing to take these particular instruments out of the operation of the taxing statute. The irrigation well could under no circumstances be considered a farm implement or a farm or agricultural product. While it is altogether probable that the equipment when installed could not be classed as "farm implements" we do not find it necessary to definitely determine that question. In our Conference Opinion No. 3061 we held that where the security is primarily of the kind which will not confer exemption the mere inclusion of farm implements in the mortgage would not take the instrument out of the taxing statute. Liens of the kind you mention go not only to the improvements placed on the land but to the land itself. Articles 5452, 5458, 5459, 5460, Revised Civil Statutes. Hence, we answer your question in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

GRL:js

APPROVED MAR 5, 1941  
*Guadalupe Mann*

ATTORNEY GENERAL OF TEXAS

