OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Bert Ford, Administrator
Texas Liquor Control Board
Austin, Texas

Dear Sir:

Attention: Mr. C. A. Paxton

Opinion No. O-3216
Re: Authority of holder of Wholesaler's Permit under Subsection (8), Section 15, Article I, Texas Liquor Control Act, (Art. 666-15, Penal Code) to sell liquor, under the facts and conditions stated, to "Officers' Clubs", located on a military reservation over which the State of Texas has ceded to the United States exclusive jurisdiction, without reserving any right to exercise its legislative authority.

Your letter of February 28, 1941, submits for our opinion the following questions, which we quote therefrom:

"At the various army and naval bases established within the State of Texas there are organizations known as 'Officers' Clubs'. These clubs are formed at the discretion of the Post Commander of Post in which each club is located. Members must be commissioned officers of the Army or Navy, and the clubs are governed by club officers and a Board of Governors consisting of the membership, which are elected by club members.

"There are no existing War or Navy Department regulations with reference to the establishment, operation, or maintenance of such clubs. The clubs operate officers' messes with a bar in conjunction

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and initial bar fees are assessed against each new member. Succeeding monthly fees are determined by the value of drinks or of liquor dispensed against the individual's account during the previous month. When a member is transferred from one Post to another, the initial bar fee, if not absorbed by charges, is refunded. All profits from the sale of drinks at Officers' Clubs are used to make improvements, pay overhead expenses, and for the entertainment of the members and their friends. It is plain that Officers' Clubs are not instrumentalities of the government, as provided in (PUBLIC-No. 819, - 76 Congress) (Chapter 787-3d Session) (H. R. 6687).

"It is to be presumed under the circumstances that any liquors sold to Officers' Clubs or acquired by Officers' Clubs are subject to state taxation under the levy section of Section 21, Article I, Texas Liquor Control Act, wherein a tax is imposed upon first sale and first sale is defined to include sale, possession, distribution, or use.

"Subsection (6), Section 15, Article I of the Texas Liquor Control Act provides for a class of liquor dealer known as a wholesaler, privileged to sell liquor to retailers and wholesalers authorized to sell liquor under state law. Separate provisions of law provide for the types of permits required for selling liquor to consumers. Section 17, Article I, of the Texas Liquor Control Act, prohibits a wholesaler from having an interest in a retail permit or license or the business thereof. Section 21, Article I of the Texas Liquor Control Act, contains the provisions of law by which a tax is imposed upon liquor and the provisions for exemptions of normal tax for out of state shipments, and for the assessment of stipulated fees as to liquors intended for shipment without the State.

"At the present time we are confronted with a problem whereby out of state wholesalers have followed the practice of shipping liquors to Officers' Clubs at various places on federal reservations, and it appears that such Officers' Clubs

are inclined to favor this type of transaction as they are enabled thus to purchase liquor at wholesale prices and such shipments do not bear the state tax.

"Practically all Officers' Clubs are located on federal areas as to which the State has ceded police jurisdiction to the Federal Government. It has occurred to us that if we have no police jurisdiction over these areas a wholesale liquor dealer in Texas would be privileged to sell and deliver liquor to the Officers' Clubs without being subject to the restrictions normally imposed. If this were permitted, the state wholesalers would affix state tax stamps to such liquor and we would not be faced with the necessity of trying to collect the tax from Officers' Clubs where interstate shipments are made to them. As a matter of fact, such officers as have commented on the matter have expressed willingness to pay the state tax and to buy liquors from wholesale dealers provided they are extended wholesale prices.

"The question arising is naturally as to whether a sale and delivery by a wholesale dealer to a federal area as to which the State has ceded police jurisdiction would be, in effect, an interstate transaction and be freed from the restrictions applying to intrastate commerce. Under the conditions stipulated, your valued opinion is desired as to the following questions:

"(1). Would the holder of a Wholesaler's Permit be privileged to sell liquor to Officers' Clubs, such sales to be consummated upon deliveries made in vehicles, and by such wholesalers onto federal property where established on

"(a). Federal areas in respect to which police jurisdiction has by the State been ceded to the Federal Government;

"(b). Areas occupied by United States military forces but as to which no cession of police jurisdiction has by the State been made to the Federal Government.

"(2). If it is your opinion that liquors may be lawfully sold by wholesalers to Officers' Clubs under either of the conditions stipulated, would such wholesalers be required to pay, in addition to the tax levied upon first sale, also the package charge against shipments exported from the State as provided for in Section 21, Article I of the Texas Liquor Control Act?

"As to all questions herein presented it is to be assumed that the Officers' Clubs are situated within areas of the State wherein the sale of liquor has not been prohibited by local option election."

With reference to Subdivision (a) of your first question, it is our opinion that the holder of a Wholesaler's Permit may lawfully sell liquor to Officers' Clubs, where such sales are consummated within the confines of a military reservation over which exclusive jurisdiction has been ceded to the Federal Government by the State of Texas, without being subject to the regulatory provisions of the Liquor Control Act which would otherwise be applicable if such sales were made by the holder of a Wholesaler's Permit within the State of Texas but outside the limits of such Federal Reservation. It not appearing that the State of Texas has reserved any right to exercise its legislative authority over the various areas in this State ceded to the Federal Government for the establishment of military reservations or other proper Federal uses, we think the question is foreclosed by the opinion of the Supreme Court of the United States in Standard Oil Company of California v. California, 291 U. S. 242, 78 L. Ed. 775, wherein it was stated:

"Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the Presidio, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well-founded; and the judgment below must be reversed.

"In three recent cases--Arlington Hotel Co. v. Fant, 278 U. S. 439, 73 L. ed. 447, 49 S. Ct. 227; United States v. Unzeuta, 281 U. S. 138, 74 L. ed. 761, 50 S. Ct. 284, and Surplus Trading Co.

v. Cook, 281 U. S. 647, 74 L. ed. 1091, 50 S. Ct. 455-- we have pointed out the consequences of cession by a State to the United States of jurisdiction over lands held by the latter for military purposes. Considering these opinions, it seems plain that by the Act of 1897 California surrendered every possible claim of right to exercise legislative authority within the Presidio-- put that area beyond the field of operation of her laws. Accordingly, her Legislature could not lay a tax upon transactions begun and concluded therein.

"Arlington Hotel Co. v. Fant, 278 U. S. 439, 73 L. ed. 447, 49 S. Ct. 227, denied the power of Arkansas by Legislation to modify the liability of innkeepers within a reservation ceded by her to the United States.

"United States v. Unzeuta, 281 U. S. 138, 74 L. ed. 761, 50 S. Ct. 284, affirmed the exclusive jurisdiction of the United States over crimes committed within the reservation lying within Nebraska. Jurisdiction had been ceded by the State.

"Surplus Trading Co. v. Cook, 281 U. S. 647, 74 L. ed. 1091, 50 S. Ct. 455, ruled that land within Arkansas purchased by the United States for military purposes with the State's consent was under their exclusive jurisdiction. Private personal property therein was declared not subject to taxation by the State.

"The principle approved in those cases applies here. A State can not legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

Although this case involves the exercise of the tax powers of a state within the limits of a ceded federal area, we think it equally controlling, in principle, to the

instant question, involving the exercise of the police or regulatory powers of the state. The full effect of the holding is that all state legislation, regardless of its source, nature or purpose, falls before the act of cession, and has no force or efficacy beyond the established limits of such ceded territory.

Our conclusion if not altered by the provisions of the "Buck Resolution" (Public--819--76 Congress, Chapter 787, 3rd Session, H. R. 6687), effective January 1, 1941, because such measure merely gives congressional assent to the collection by the various states, of sales or use taxes accruing within the confines of Federal areas over which exclusive jurisdiction has been ceded by such states to the Federal Government, and which areas had theretofore been freed from state taxation under the above decision. But with this exception, all jurisdiction which has been acquired by and reserved to the United States over such Federal areas or military reservations, under the cessions of exclusive jurisdiction by the various states, is not in any way limited or impaired by the "Buck Resolution". The police or regulatory power of the State, such as the requirements of the Texas Liquor Control Act, regulating the sale of liquor within the State, does not and cannot, under said congressional measure, reach over into such ceded areas, and the holder of a Wholesaler's Permit is yet authorized under the case of the Standard Oil Company of California v. California, supra, to sell liquor to an Officers' Club within such area, free of the restrictions and requirements of the Texas Liquor Control Act. This is made plain by the express provision of the "Buck Resolution", in Section 4 thereof:

> "The provisions of this Act shall not for the purpose of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area."

Of course, the principle of immunity of persons and property within ceded Federal areas from the legislative powers of the State, declared in the case of Standard Oil Company of California v. California, supra, would not apply to the situation presented by Subdivision (b) of your first question. Federal areas within the State of Texas over which exclusive jurisdiction has not been ceded by the State to the Federal Government, would be subject to the legislative powers

of the State, including the provisions of the Texas Liquor Control Act controlling intrastate transactions, despite the fact that such area was occupied and used by the military forces of the United States. However, if the described Officers' Clubs, located in such areas, are agencies or instrumentalities of the Federal Government, for the purpose of carrying out its constitutional functions, another theory of immunity from state legislation would be presented. We do not discuss this question as it is not within the scope of your inquiry.

With reference to your second question, it is our opinion that liquors may be lawfully sold by the holder of a Wholesaler's Permit to Officers' Clubs under the conditions or circumstances stated in either Subdivision (a) or (b) of your first question, without the payment by such wholesalers of the package charge or fee required upon interstate shipments, under Section 21, Article I, of the Texas Liquor Control Act, providing, in part, as follows:

> ". . . Any person authorized to export liquor from this State having in his possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of Twenty-five (25) Cents shall be made for every such stamp, except that a charge of Ten (10) Cents shall be made for each such stamp placed on vinous or malt liquors of twenty-four (24) per cent alcoholic content or less. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish to the Board duplicate copies of all invoices for the sale of such liquors within twenty-four (24) hours after such liquors have been removed from their place of business."

We think the foregoing provisions contemplate the shipment or transportation of liquor beyond the external boundaries of the State of Texas, in interstate commerce, according to the strict and usual meaning of the term. Although the transportation, shipment or sale of goods and commodities into and within military reservations and other Federal areas over which exclusive jurisdiction has been ceded by the State, bears a strong analogy, as regards only the legal consequences or results flowing therefrom, to traffic or commerce between the State of Texas and another state, such transactions do not constitute interstate shipments, within the contemplation of the above-quoted provision of the Texas Liquor Control Act, requiring a package fee on liquor intended for shipment without the State. Consistently with this interpretation, liquor which is sold under the conditions and circumstances stated in your letter, bears the burden of the regular stamp tax levied by the Liquor Control Act upon intrastate sales. For these reasons, we answer your second question in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Pat M. Neff, Jr.
Pat M. Neff, Jr.
Assistant

PMN:LM

APPROVED MAR 28, 1941
Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

THIS OPINION CONSIDERED AND APPROVED IN OPINION COMMITTEE

APPROVED OPINION COMMITTEE BY BWB CHAIRMAN

OK. YPF