OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Leonard, Speaker
House of Representatives
Austin, Texas

Dear Sir:

Opinion No. O-3436
Re: Authority of Legislature to levy occupation tax on concerns transacting business for profit.

We have your letter of April 24, 1941, withdrawing the request contained in your letter of April 21, 1941, and submitting in lieu thereof your request for an opinion upon the following question:

> "Does the Legislature have power and authority to levy an occupational tax on concerns transacting business for profit, while at the same time not taxing concerns in the same line of business but not operating for profit?"

Article VIII, Section 1, of the Texas Constitution, provides in part as follows:

> "Section 1. Taxation shall be equal and uniform . . . It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. . ."

Article VIII, Section 2, provides in part as follows:

> "Section 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; . . ."

The Legislature has power to classify the subjects of occupation taxes, and the considerations upon

DRAFT

OPINIONS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

which such classifications shall be made are primarily for the determination of the Legislature, subject to the rule that the classification must find a reasonable basis in the nature of the businesses classified. Texas Company v. Stephens, 100 Tex. 628, 103 S. W. 481.

Differences in the methods of conducting businesses are sustained as supporting classification for the purposes of levying occupation taxes. Hurt v. Cooper (Com. App.), 110 S. W. (2d) 896; State Board of Tax Commissioners of the State of Indiana v. Jackson, (U.S.) 75 L. Ed. 1248.

In the case of Hurt v. Cooper, supra, at page 901, the court observes that differences in the profits derived may be taken into consideration by the Legislature in making classifications for the purpose of levying occupation taxes and determining the amount of tax to be laid upon each.

The following cases sustain pecuniary profit as a reasonable basis for classification for purposes of taxation. Citizens Telephone Company v. Fuller, 229 U. S. 322, 57 L. Ed. 1206; Iowa Mutual Tornado Insurance Association v. Gilbert, 129 Iowa 658, 106 N. W. 153; State v. Minnesota Farmers Mutual Insurance Company, 145 Minn. 231, 176 N. W. 796; Northwestern Masonic Aid Association v. Waddill, 138 Mo. 628, 40 S. W. 648; Bankers Life Company v. Chorn (Mo.) 186 S. W. 681.

You are therefore advised that, in our opinion, the Legislature may classify concerns in the same general line of business according to whether the business is done for profit or not, for the purpose of levying an occupation tax.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

R. W. Fairchild
Assistant

RWF:LM

APPROVED MAY 1, 1941
ȣ - GROVER SELLERS
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED: OPINION COMMITTEE

By: - B. W. B., Chairman