OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable P. L. Marquess
County Auditor
Wharton County
Wharton, Texas

Dear Sir:

Opinion No. O-5663
Re: (a) Liability of the county for the fee of 50¢ required by Section 57, House Bill No. 407, Chapter 4, Acts, 48th Legislature, as amended by House Bill No. 205, Acts, Regular Session, 47th Legislature (Article 1436-1, Vernon's Annotated Penal Code) commonly known as the Certificate of Title Act
(b) Liability of the county for the retail sales tax of 1% upon motor vehicles, levied by Article VI, House Bill 8, Acts, Regular Session, 47th Legislature, commonly known as the Omnibus Tax Law.

Your letter of June 7, 1941, submits for our opinion the following inquiries:

"Please give Wharton County your opinion on the following questions:

"1. Is a County liable for the 50 cents fee required by the Texas Highway Department for the application for Certificate of Title only for any motor vehicle.

"2. Is a County liable for the 1 per cent motor vehicle sale, use, or transfer tax as per Art. VI., H.B. 8, Regular Session 47th Legislature on motor vehicles it purchases."

The answer to your first question is removed from the field of statutory construction by the following express

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provisions of the above cited Certificate of Title Act:

> "Sec. 4. The term 'Owner' includes any person, firm, association, or corporation other than a manufacturer, importer, distributor, or dealer claiming title to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale as herein defined, except the Federal Government and any of its agencies, and the State of Texas and any governmental subdivision or agency thereof not required by law to register or license motor vehicles owned or used thereby in this State."
>
> "Sec. 60. The provisions of this Act shall not apply to motor vehicles not required to be registered or licensed under the laws of this State then effective, nor to motor vehicles owned or operated by the Federal Government or any of its agencies, the State of Texas, or any municipal government unless such motor vehicle is sold to a person required under this Act to procure a certificate of title, in which event the provisions hereof shall be fully operative as to such motor vehicle."

A negative answer to your first question is required under the above-quoted statutory provisions.

With reference to your second question, this department held, in our Opinion No. O-3797, that motor vehicles purchased at retail sale and owned and operated by agencies or instrumentalities of the Federal Government or by counties, cities, school districts and other political subdivisions of the State of Texas, would not be subject to the tax levied by Article 6, House Bill No. 8, Acts, Regular Session, Forty-seventh Legislature. We enclose a copy of this opinion for your convenience and information.

Trusting the foregoing fully answers your inquiries, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Pat M. Neff, Jr.
Assistant

APPROVED AUG 4, 1941
Gerald C. Mann
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN

PMN:LM
ENCLOSURE