



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable John T. Hutchison
County Attorney, Lamar County
Paris, Texas

Dear Sir:

Opinion No. O-6514
Re: Article 7047a, Section 15,
County occupation tax on coin-
operated machines. Levied when?

We have carefully considered your request of April 19, 1945, which we quote, for an opinion upon the above captioned statute:

"I wish to submit the following question to your department for an opinion:

"Under Article 7047a, Section 15, Vernon's Annotated Civil Statutes, authorizing counties to levy an occupation tax on coin-operated machines, is there any specific time when such tax may be levied or may it be levied at any time?"

Article 7047a-2, et seq., Vernon's Annotated Civil Statutes, levies an annual State occupation tax on every "owner" of any "coin-operated machines" who shall pay same on every coin-operated machine as defined in Articles 7047a-2, et seq., who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any such machines.

Article 7047a-15, Vernon's Annotated Civil Statutes, provides "that all counties. . . within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one-half (1/2) of the State tax. . ." (Acts 1936, 44th Leg., 3rd C.S. p.2040, ch. 495, Art. 3, Sec. 4, Subsec. 13)

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Articles 2354 and 7045, R. C. S., (which were suspended until May 1, 1945, by Chapter 256, Acts 1943, R. S. p. 381 — Articles 2354a and 7045b, Vernon's Annotated Civil Statutes) read as follows:

"No county tax shall be levied except at a regular term of the court, and when all members of said court are present."

"The commissioners courts of the several counties, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the Comptroller the said certificate and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls."

Article 7045 provides for the Commissioners to "calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls." This article applies to ad valorem taxes, not occupation taxes. It will be noticed that the calculations may be done at a "regular or special session" and the authority to "adjust the taxes levied" appears conclusive that at that time the taxes will have been previously levied, as the Commissioners Court can only levy taxes at a "regular term," as required by Art. 2354, V. A. C. S..

In *Broocks v. State*, (C.A.) 41 S.W.(2d) 714-719, the Court said:

"Appellants correctly contend, under Article 2354, R. S. 1925, that a tax levy can be made by the Commissioners' Court only at a regular term of the Court and when all the members of the Court are present." Citing *Free v. Scarborough*, 70 Tex. 672, 8 S. W. 490, in which the Court said:

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"The only question in this case. . . considered is the power of the county commissioners to levy a tax at a called session of the court".

And in said case our Supreme Court held:

"A tax levied at a called session of the court, or without the presence of the full membership, is not levied according to law. . ."

It is our opinion that the commissioners court may, at any regular term thereof, a full board being present, levy the occupation tax authorized by Article 7047a-15, Vernon's Annotated Civil Statutes.

Yours very truly

APPROVED MAY 16 1945

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Jos. V. Frnka
Assistant

JVF:AMM

