



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

March 13, 1957

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-58

Re: Whether or not the tax provided for by Article 7047m, V.C.S., accrues where all acts in connection with the transfer occur outside the boundaries of Texas except the recording of the transfer on the official books of the Texas corporation.

Dear Mr. Calvert:

Your request the opinion of this office as to whether Article 7047m, Vernon's Civil Statutes, imposes a stamp tax upon the transfer of the stock of a corporation when every incident of the transfer occurs outside the State, except the transfer upon the books of the corporation.

First, it should be noted that the statute upon which our prior opinion, No. 0-3713, was based no longer prevails. Article 1334, V.C.S., upon which our prior opinion was rendered, has become inoperative and has been superseded by Article 1358-1, V.C.S., of the Uniform Stock Transfer Act.

It is no longer required that stock be transferrable only on the books of the corporation in such manner as the by-laws may prescribe to complete the sale or transfer. The Court held in the case of Snyder Motor Co. v. Universal Credit Co., 199 S.W.2d 792 (Tex. Civ.App. 1947 writ ref.), in construing Article 1358-1, V.C.S., as follows:

"On small pieces of paper are written the evidence of fortunes. It is therefore of great importance that these titles should rest on a sure foundation. . . . The main purpose of the Uniform Act is to make certificates of stock the sole representative of the shares which they represent. . . . A transfer of stock certificate is made to operate as a transfer of the share represented thereby without regard to transfer on the books of the company

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"The above section negatives the necessity of a transfer on the books of the company. Such transfer

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under the Act becomes no more than the recording of a deed to land. ..." (Emphasis supplied)

Therefore, under the undisputed facts, as submitted by you, transfer of stock in a domestic corporation is specifically exempt from the tax by that portion of Article 7047m, Section 1, V.C.S., reading as follows:

". . .; nor in respect to shares or certificates of stock or certificates of rights to stock, or certificates of deposit representing certificates of the character taxed by this Article, in any domestic association, company, or corporation, if neither the sale, nor the order for, nor agreement to buy, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this state. . ."

You are therefore respectfully advised that no stamp tax is due on the transfer of certificates of stock of a domestic corporation under the facts presented by you.

SUMMARY

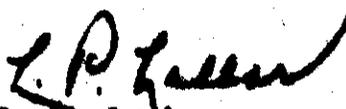
The tax statute exempted, and exempts, from the stamp tax, transfers, the requisites are concluded without the State, "when no Act necessary to effect the sale or transfer is done in this State". Former Article 1334 required transfer on the corporate books. That statute was repealed and 1358-1 was substituted which provides transfer is by endorsement and delivery and specifically provides transfer on the books is not a requisite, even though required by the corporate charter and by-laws. The Snyder Case holds the transfer is effectuated "without regard to transfer on the books of the company". The Legislature thereafter amended the tax statute with presumptive knowledge of the repeal of 1334, the enactment of 1358-1, and the construction given the latter in the Snyder Case, yet it did not tax "recorded transfers". Recording the transfer

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is not requisite to the sale or transfer.
Therefore, if all that is to be done in Texas
is to record the transfer "no Act necessary
to effect the sale or transfer is done in this
State" and the transaction is tax exempt.

Yours truly,

WILL WILSON
Attorney General

By 
L. P. Lohr
Assistant

APPROVED:

OPINION COMMITTEE
H. Grady Chandler, Chairman

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