



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 10, 1960

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

Opinion No. WW - 848

Re: Method of disposing of
cigarettes seized by
Comptroller's Department
under provisions of
Chapter 7, H.B. 11, 56th
Leg., 3rd C.S.

Dear Mr. Calvert:

Your request reads as follows:

"Since 1948 the State Comptroller's Department has accumulated, by seizure, cigarettes in the amount of 2,513 packages of twenty (20) cigarettes each.

". . .

"In the second paragraph of Subsection 3, Article 7.31 of Chapter 7, House Bill 11, enacted during the 3rd Called Session of the 56th Legislature, provides, 'In the event the cigarettes seized hereunder and sought to be sold upon forfeiture, summary sale, or "OTHER PROCESSES PROVIDED BY LAW" and in Article 7.32 of same Chapter and House Bill referred to above provides "the seizure, forfeiture and sale of cigarettes and other property under the terms and conditions hereinabove set out, and whether with or without court action'.

"The wording in these referred to articles implies that the sale of these cigarettes may be made, without meeting the requirements provided for in paragraph (1) of Article 7.31 of Chapter 7, House Bill 11.

"I have been informed by the manufacturers of the cigarettes involved of their willingness to pay, to the State of Texas, in money the full value of their cigarettes, upon return to the factories of the cigarettes.

"Will you advise me if I can legally dispose of these cigarettes in such a manner or what other process is available under the provision 'other processes provided by law' and my option under to 'with or without court action."

Chapter 7, "Cigarette Tax Law", Title 122a, "Taxation-General", Revised Civil Statutes of Texas, reads in part as follows:

"Art. 7.30 Seizure

(1) All cigarettes on which taxes are imposed by this Chapter, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Cigarette Tax Law, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, . . . may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as herein after provided.
. . .

"Art. 7.31 Sale by Comptroller

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the cigarettes and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars (\$500), or less, by the following summary proceedings: . . .

"In the event the cigarettes seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be unstamped, the officers selling the same shall, upon sale thereof, affix or cause to be affixed, the stamps so required and

deduct the expense thereof from the proceeds of such sale. (Emphasis Supplied)

"Art. 7.32 Seizure of sale no defense

The seizure, forfeiture and sale of cigarettes and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this law or from liability to pay penalties provided by this law, with or without suit therefor." (Emphasis Supplied)

It is clear that the use of the term "seizure, forfeiture and sale . . . under the terms . . . hereinabove set out . . ." in Art. 7.32 does not give the Comptroller the right to forfeit or sell seized cigarettes in any manner other than those set out in Arts. 7.30 and 7.31.

A fundamental principle in the construction of statutes is that a provision for a forfeiture should be strictly construed, and it should be interpreted to prevent, rather than to cause, a forfeiture. 19 Tex. Jur. "Forfeitures § 4, and cases cited therein.

Chapter 7 "Cigarette Tax Law" provides two methods for the Comptroller to sell seized cigarettes: forfeiture and summary sale. Sine no other process has been provided by law, the term "other process provided by law" at the end of Art. 7.31 does not enlarge the remedies available to the Comptroller.

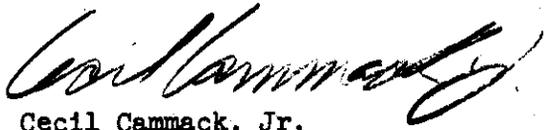
SUMMARY

Chapter 7 of Title 122a, "Taxation-General", Revised Civil Statutes of Texas, provides only two methods of disposing of cigarettes seized by the Comptroller's Department: Forfeiture, as provided by Art. 7.30, and Summary Sale, as provided by Art. 7.31.

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Yours very truly,

WILL WILSON
Attorney General of Texas

By: 
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CC:ca

APPROVED:

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