



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 3, 1961

Mr. Jerry N. Shurley
County Attorney
Sutton County
Sonora, Texas

Opinion No. WW-1105

Re: Whether Sutton County, as a user of "special fuels", must execute the bond required by Art. 10.10(1), Title 122A, Taxation-General, Revised Civil Statutes of Texas, to secure payment of taxes due the State of Texas on such fuel.

Dear Mr. Shurley:

You request the opinion of the Attorney General of Texas in answer to two questions relative to the Special Fuels Tax Law, Chapter 10 of Title 122A, Taxation-General of the Revised Civil Statutes of Texas.

You recite the following facts as a basis for your questions.

"Sutton County road equipment consists of bull-dozers, maintainers, shovels, etc. which are exclusively used for the construction and maintenance of County roads throughout the County. In connection with the use of this equipment, it is necessary to avoid unnecessary delay in the moving of this equipment from one location to another; therefore, the County also has a truck-trailer unit called a 'low boy' used for transporting the bull-dozer and shovel from one location to another. This truck necessarily travels upon the State highways.

"In all of the above equipment, diesel oil is used for fuel. This fuel is denominated a 'special fuel' and comes within Chapter 10 of Title 122A, Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, so far as the taxation of this special fuel is concerned.

"Recently, the Comptroller of Public Accounts of Texas has advised the supplier who has been selling this special fuel to Sutton County that it would be necessary for Sutton County to execute a bond payable to the State of Texas since: (1) The 'low-boy' truck used by Sutton County is operated upon the State highways, and (2) due to the fact. . . Sutton County would not be eligible to simply execute an affidavit that all of such fuel was used off of the State highways thus coming under exemption from the tax imposed upon the special fuel."

You ask:

- 1) Whether Sutton County is a "person" within contemplation of the Special Fuels Tax Law;
- 2) Whether the county may lawfully execute a bond to secure payment by it to the State of the tax incurred by the county upon its use of "special fuels" as defined in Art. 10.02(1) of this law.

We answer both your questions "Yes".

Art. 10.02(9) of this law defines a "person" as follows:

"'Person' means every individual, firm, association, joint stock company, syndicate, partnership, copartnership, corporation (public, private, or municipal), trustee, agency or receiver."

Art. 10.10(1) of this law requires a bond to insure payment of the tax by every person who uses special fuels, as follows:

"Every person who is authorized by permit or required by law to make remittances or payments directly to this State. . .of taxes incurred upon the use of said products shall file with his application for permit a bond. . . ."

We believe "person" as defined in the Special Fuels Tax Law includes Sutton County. This law is a general law. We find in it

no exemptions from its provision of any user of special fuels.

"The term 'person' as extended to include 'corporation' may include the State (thereby, obviously, including all State components or 'functioning arms') where such an intention is manifest."

The quoted language was used in Opinion of the Attorney General of Texas No. WW-821 (1960); we believe this language is also applicable in determining the meaning of "person" as defined in the statutes relating to special motor fuels. Opinion No. WW-821 held that the State Parks Board was a person within contemplation of Art. 23.03, V.A.T.S., Tax.-Gen. which requires a person owning, operating, managing or controlling any hotel to collect and pay over to the State a hotel occupancy tax. A copy of that opinion is herewith enclosed.

Further, "person" as defined in Art. 10.02(9) (supra) ". . . means every . . . corporation (public, . . . or municipal). . . ." The term "municipal corporation" in its broad meaning includes counties. Tex. Const. Art. XI; Galveston v. Posnainky, 62 Tex. 118 (1884); Johnson v. Llano County, 39 S.W. 995 (Civ.App. 1897); Brite v. Atascosa County, 247 S.W. 878 (Civ.App. 1923, error dism.); 30-A Tex.Jur. (Rev.) 27, Municipal Corporations, Sec. 6. Also, the Legislature has declared each county to be a body corporate in Art. 1572, V.C.S., which reads as follows:

"Each county which now exists or which may be hereafter established, shall be a body corporate and politic."

We pass now to a consideration of whether Sutton County may lawfully execute the bond required in Art. 10.10(1).

Our Texas Constitution, Art. V, Sec. 18 is the constitutional source and limitation of the powers of the County Commissioners Court of each county in the State. In its pertinent provisions it reads:

". . . The County Commissioners so chosen, with the County Judge as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed."

Articles 6740 and 6741, V.A.C.S., require the Commissioners Court to build, work and repair county roads and authorize it to ". . . purchase or hire all necessary road machinery. . . as may be needed. . . ." The purchase and use of fuel to operate road machinery and the necessarily related equipment is necessarily incident to this statutory duty.

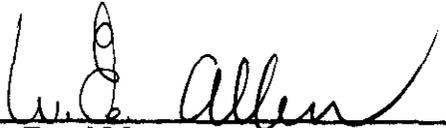
Incident to the use of special fuel the Legislature has required of every user a bond to secure to the State the tax imposed upon such user. Article 10.10(1) supra. Counties were not exempted from this requirement and said Article in our opinion authorizes counties to make such bond. This requirement is clearly within the scope of "county business" contemplated by the above provisions of the Constitution and statutes.

S U M M A R Y

Sutton County is a "person" within contemplation of Art. 10.02(9) and is required to execute the bond required by Art. 10.10(1), both of the Special Fuels Tax Law, Chapter 10 of Title 122A, Taxation-General, Revised Civil Statutes.

Yours very truly,

WILL WILSON
Attorney General of Texas


W. E. Allen
Assistant Attorney General

WEA:jp

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