



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER CARR
ATTORNEY GENERAL

February 22, 1966

affirm opinion

WW-118

C-623 amend Summary

Honorable W. C. Lindsey
Criminal District Attorney
Jefferson County
Beaumont, Texas

Opinion No. C-622

Re: Under the stated facts whether the organization in question is acting illegally under the laws of the State of Texas and in particular, in violation of the "Texas Open Saloon Law" (Art. 666-3 and Art. 667-3, V.P.C.)

Dear Mr. Lindsey:

In your request for an opinion of this office, you state the following facts and ask the following questions:

"A fraternal organization is furnishing, on its premises, mixed alcoholic beverages and beer to its members for a cash consideration here in Jefferson County. They are doing so under the 'Locker System' and/or 'Pool System' as same is described in Article 666-15 (e) Section 1(b) and (c), Penal Code of Texas. This organization does not have from the State of Texas, or any of its agencies or subdivisions, a license or permit to deal in alcoholic beverages, nor does it have a private club registration permit from the Texas Liquor Control Board. We feel that it is a 'Fraternal Club' as that term is used in Art. 666-15 (e) Sec. 12, Texas Penal Code.

"Under the above facts, we request your opinion on the following:

"1. Is the organization acting illegally under the laws of the State of Texas and in particular, in violation of the 'Texas Open Saloon Law' (Art. 666-3, Penal Code) and

Art.667-3, Penal Code?

"2. May such an organization obtain a Private Club Registration Permit under the laws of the State of Texas?

". . . ."

The controlling question appears to be whether the fraternal organization is exempt from the application of the statute, being House Bill 892, Acts of the 57th Legislature, Regular Session, Ch. 262, p. 559. (Codified in Vernon's Penal Code as Article 666-15(e) of the Texas Liquor Control Act).

Section 1A (Art. 666-15e [12], V. P. C.) of the subject act provides:

"Provided, however, that nothing in Section 15(e) of Article 1 of the Texas Liquor Control Act shall apply to Fraternal or Veterans Clubs."

In Attorney General Opinion No. WW-1118 (1961) this office had occasion to consider this question and to hold that veterans and fraternal organizations were "exempt" from the application of such Act. To "exempt" from the law means to relieve, excuse, or set free from a charge, duty, burden or liability imposed upon the general class to which the individual exempted belongs. Black's Law Dictionary, Third Ed., p. 720; 34 C.J.S. 1377-1378, "Exempt", and cases cited. According to the latter text, when used as a verb, "The term is not a technical one but is a plain English word, meaning to clear, to except or excuse from some burdensome condition or obligation or the operation of some law to which others are subject. . . ."

Thus the term "exempt" must be distinguished from the term "exclude", which, according to 33 C.J.S. 111, "Exclude", is "A word in common usage, defined as meaning to shut out. . . or prohibit; to preclude; also to except . . .". It is apparent that the legislature expressed its intention under the act clearly and unambiguously to relieve fraternal organizations from the operation of the law in question and from any duty or liability to qualify under same. The language used is too clear for construction.

As stated in 53 Tex.Jur.2d 174, Statutes, Sec. 123,

"There is no room for construction when the law is expressed in plain and unambiguous language and its meaning is clear and obvious. In such a case the law will be applied and enforced as it reads, regardless of its policy or purpose, or the justice of its effect. In other words, a court is not authorized to indulge in conjecture as to the intention of the legislature, or to look to the consequences of a particular construction, unless the meaning of the statute is doubtful."

The intent of the Legislature being clearly ascertainable, it must be followed and govern even though a literal meaning of the words used in the statute is not followed. The Statute should never be given a construction that leads to uncertainty, injustice, or confusion. Woods v. State ex rel. Lee, 133 Tex. 110, 126 S.W.2d 4, 7 (1939).

We here reaffirm and concur in correctness of Attorney General Opinion No. WW-1118 (1961) and the necessary implications of such opinion. It necessarily follows that the organizations inquired about are not excluded but are exempted from the Act. Any other ruling would necessarily declare that the fraternal and veterans organizations were excluded from the Act entirely and not entitled to operate a private club. Such a construction would render that portion of the law unconstitutional because it would constitute illegal class legislation. This is so because legislation which accords unequal treatment to persons similarly situated is held to violate the equal protection clause of the federal constitution. Associated Indemnity Corp. v. Oil Well Drilling Co., 258 S.W.2d 523, affirmed, 153 Tex. 153, 264 S.W.2d 697 (1955). If an individual be denied a facility or convenience which is furnished to others under substantially the same circumstances, he may properly complain of the invasion of his constitutional rights to equal protection of the law. Beal v. Holcombe, 193 F.2d 384, cert. den. 74 S.Ct. 783, 347 U.S. 974 (1951). Even though the Texas Liquor Control Act is an exercise of the police power, such power is subject to judicial review and may not be extended to deprive citizens of property without equal protection of the law. Missouri-

Kansas-Texas R. Co. of Texas v. Rockwall County Levee Imp. Dist.
No. 3, 117 Tex. 34, 297 S.W.206 (1927); Harvey v. Morgan,
272 S.W.2d 621 (Tex.Civ.App. 1954, error ref., n.r.e.).
Since it is the duty of a court ~~wherever~~ possible to indulge
a construction in favor of validity and constitutionality
(53 Tex.Jur.2d 225, Statutes, Sec. 158), we must reject
that construction.

We are reinforced in our opinion by the further fact
that if the statute is subject to construction, then the Legis-
lature has twice met in regular session since Attorney General
Opinion WW-1118 (1961) and has acquiesced in such ruling of
"exemption" and not seen fit to amend, alter, or change the
Act in this respect as interpreted and followed by the Attorney
General. Such departmental construction will ordinarily be
adopted and upheld under these circumstances. 53 Tex.Jur.2d
259, 262, Statutes, Sec. 177, and cases cited. The doctrine
of legislative acceptance would thus be applicable and the
Legislature must be deemed to have accepted such construction.
Huey & Philp Hardware Co. v. Shepperd, 151 Tex. 462, 251 S.W.2d
515 (1952); Calvert v. Houston Lighting & Power Co., 369 S.W.2d
502 (Tex.Civ.App., 1963 error ref., n.r.e.).

Although apparently the exempted organizations have
generally been following the above construction, we further
note that during the past five-year period no case has reached
the appellate courts in which the correctness of this construc-
tion has been challenged. We hold, therefore, that the veteran
and fraternal organizations are not required to obtain a permit,
the law being inapplicable to them, and they are not in viola-
tion of the "Texas Open Saloon Law", Art. 666-3 and Art. 667-3,
V.P.C., merely by failure to obtain a permit or otherwise comply
with the provisions of Sec. 15 (e) of Art. 666.

This opinion shall not be construed to mean that the
veterans and fraternal organizations are exempted from other
provisions of the Texas Liquor Control Act and which are not
covered in Sec. 15 (e), Art. 666, V.P.C.

S U M M A R Y

Fraternal or Veterans Clubs are "exempt" from the provisions of Section 15 (e) of Art. 666, V.P.C., and are not in violation thereof or acting illegally in selling alcoholic beverages to its members on its premises without a license or permit as provided for and required in such law for those not so exempt from its provisions or requirements.

Yours very truly,

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Attorney General

By: *Kerns B. Taylor*
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KBT:cf

APPROVED:
OPINION COMMITTEE

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