



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

WAGGONER CARR
ATTORNEY GENERAL

May 3, 1966

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

Opinion No. C-674

Re: Permit fee on cigarette
vending machines on
military reservations.

Dear Mr. Calvert:

By letter of March 15, 1966, you request an opinion of this office on the following question:

"Are cigarette vending machines owned and operated by a concessionaire on a military reservation subject to the permit fee under Article 7.09, Title 122A, Taxation-General, Vernon's Civil Statutes."

It is our understanding that only cigarettes upon which the necessary State tax has been affixed are sold from the cigarette vending machines on the military reservations; that cigarettes exempt from tax are only sold to authorized personnel by Post, Camp, or Unit Exchanges established and operated by the Armed Forces.

The military authorities require the concessionaire ". . . to pay all license fees, and comply with all municipal, state or Federal laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the business carried on under this agreement, and to assume complete and sole liability for all Federal, state and local taxes applicable to the property, income and transactions of the concession."

Article 7.09, Title 122A, Taxation-General, Vernon's Civil Statutes, requires every distributor, wholesale and retail dealer in this State now engaged or who desires to become engaged in the sale or use of cigarettes upon which a tax is required to be paid, to file an application for a cigarette permit as a distributor, wholesale dealer or retail dealer, and to forward with said application, in the case of a retail dealer a fee of five dollars. Coin-operated cigarette or tobacco products vending machines shall be issued a retail

dealers permit. Said permit shall provide that the same is revocable and shall be forfeited or suspended if the conditions of issuance are not complied with, or upon any violation of the provisions of the Cigarette Act or any reasonable rule or regulation adopted by the Comptroller. If a permit is revoked, forfeited or suspended, the dealer is prohibited from selling cigarettes from such place of business until a new permit is granted or the suspension of the old permit removed. The Treasurer of the State may refuse to sell stamps to any person who has not obtained a permit to engage in business as a distributor or to any distributor whose permit has been revoked or suspended until such permit has been reinstated or a new permit issued.

This office has heretofore held that a retail permit was required for each cigarette vending machine. Attorney Generals Opinion No. WW-212 (1957).

From the foregoing it appears that the provisions of the cigarette law insofar as the permit is concerned is regulatory in nature and designed to prohibit the operation as a specified dealer except under certain conditions prescribed by the legislature and primarily regulated in such a manner to guarantee as nearly as possible the payment of the taxes due on cigarettes sold.

Having determined that the legislature intended that every person selling cigarettes be required to have a permit before engaging in such business, what is the effect, if any, of selling cigarettes from vending machines on military reservations?

Section 105 of Chapter 4, U. S. Code, and being a portion of what is commonly known and referred to as the "Buck Act," specifically provides:

"(a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy

and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

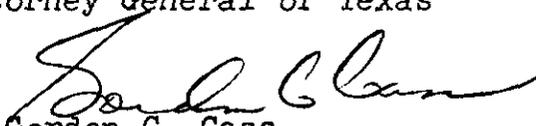
In the absence of the above Federal Statute, the State of Texas would be without authority to levy taxes on military reservations which had been ceded to the United States without reserving the taxing authority. Adams v. Calvert, 396 S.W.2d 948 (Tex.Sup. 1965). In this case the State of Texas was seeking to collect an occupation tax on "coin operated machines" levied by Article 13.02, Taxation-General of Vernon's Civil Statutes. As the Buck Act only authorized the States to levy and collect sales and use taxes where exclusive jurisdiction was ceded by a State, the Court stated: "Once exclusive jurisdiction is ceded, only those State and local taxes authorized by the Buck Act, 4 U.S.C. Sections 104-110, may be levied against property in the Federal enclave." The cigarette tax is a sales and use tax and the Buck Act clearly authorizes the States to levy and collect such tax. The Buck Act expressly states that the State's jurisdiction to collect the sales and use taxes shall be "to the same extent and with the same effect as though such area was not a Federal area." Such language clearly gives the State of Texas the unquestioned right to collect the permit fee set forth in Article 7.09, Taxation-General, Vernon's Civil Statutes, as the permit requirement is incidental to and in furtherance of the collection of the sales and use tax on cigarettes.

S U M M A R Y

Cigarette vending machines owned and operated by a concessionaire on a military reservation are subject to the permit fee under Article 7.09, Title 122A, Taxation-General, V.C.S.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By 
Gordon C. Cass
Assistant

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APPROVED:

OPINION COMMITTEE
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James Broadhurst
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APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright