



**THE ATTORNEY GENERAL
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AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

December 18, 1968

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

Opinion No. M-326

Re: Construction of Article 12.01, Chap. 12, Title 122A, Taxation-General, V.C.S., as amended, as to non-profit corporations organized to provide homes for people who are sixty-two years of age and older, without regard to this classification of purely public charity.

Dear Mr. Calvert:

You ask our opinion in answer to whether the omission of the paragraph specifically exempting corporations organized for the purpose of providing homes for elderly persons from the 1968 amendment to the franchise tax statute effected an imposition of the "additional franchise tax" imposed by that act upon such corporations.

The facts are that in 1967 the Legislature amended subsection (1), Article 12.01, Chapter 12, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, to impose an additional franchise tax on that portion of taxable debt allocable to Texas.¹ This act contained the following exemption:

1. Acts 1967, 60th Legislature, Chapter 359, Page 849, Section 1. This amendment became effective May 1, 1968. (Section 2 of the Act.)

"The additional franchise tax levied by this Subsection (1)(a)(ii) shall not apply to corporations organized for the purpose of providing homes for elderly people sixty-two (62) years of age and older not for profit without regard to whether such corporations are for purely public charity."

The First Called Session of the same Legislature² amended subsection (1), wholly omitting the exemption provision just quoted and making other changes not relevant to the question we have under consideration, none of which changes altered the basic structure of the statute. This latter Act became effective October 1, 1968.

The caption of the 1968 amendment, in its relevant portions, reads as follows:

"An Act raising revenue for the operation of State government; ... amending Chapter 12, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, to increase the corporate franchise taxes;...."

The caption conforms to the body of the Act, and both are clear and unambiguous.

It is the opinion of this office that this complete omission of the paragraph, containing the exemption from the 1968 enactment, effected its repeal. The omission of said paragraph is within the purview of the caption of the Act, that is, to raise revenue and to increase the corporate franchise tax, both of which purposes are effected by the removal of the exemption which appeared in the 1967 Act.

Article III, Section 36 of our State constitution provides the answer to your question. It reads as follows:

2. Acts 1968, 60th Legislature, First Called Session, Chapter 2, Page 2, Section 1.

"No law shall be revived or amended by reference to its title; but in such case the Act revived, or the section or sections amended, shall be re-enacted and published at length."

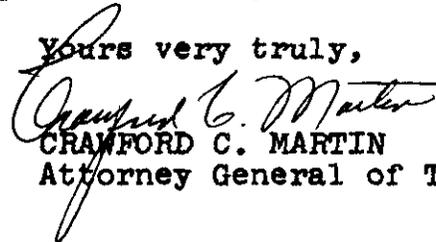
Our courts have interpreted this provision literally. Humble Oil & Refining Co. v State, 104 S.W.2d 174 (Tex. Civ. App. 1936, ref.); State Highway Department v Gorham, 162 S.W.2d 934 (Tex. Sup. 1942).

As applied to your question, that section of our constitution simply means that the Act of 1968 completely supersedes the Act of 1967 in that the exemption provision in the 1967 Act was not carried forward by the Act of 1968; such paragraph was therefore wholly repealed.

SUMMARY

By the omission of the above quoted paragraph from Acts 1968, 60th Legislature, First Called Session, Chapter 2, Page 2, Section 1, providing the exemption, the tax on taxable debt is now applicable to corporations organized for the purpose of providing homes for elderly people sixty-two (62) years of age and older not for profit without regard to whether such corporations are for purely public charity.

Yours very truly,


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