



**THE ATTORNEY GENERAL
OF TEXAS**

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July 23, 1969

**Sustained by
Calvert v. Thompson
472 SW2d 311 1971**

Honorable Robert S. Calvert
Comptroller of Public Accounts
State Capitol Building
Austin, Texas 78711

Opinion No. M-437

Re: House Bill No. 579,
Chapter 497, Acts of
the 61st Legislature,
page 1606 (Title 122A,
Taxation General, V.C.S.),
regarding certain coin-
operated machines.

Dear Mr. Calvert:

In your recent request for opinion you present the following questions:

"Will an annual license fee under Section 16(1) of Article 13.17 of House Bill No. 579 be required from the following:

- "(a) The owner of a coin-operated machine or machines which are operated by him exclusively in a liquor store wholly owned and operated by him, in which alcoholic beverages are consumed and sold.
- "(b) The owner of a coin-operated machine or machines which are operated by him exclusively in bars or taverns operating under one or more permits issued by the Liquor Control Board which are owned by him.
- "(c) The owner of a coin-operated machine or machines which are operated by him exclusively in a cafe, wholly owned and operated by him, where no alcoholic beverages are sold.

"In regard to each of these questions, please assume that the machines are owned and used directly and strictly in connection with such an establishment

as distinguished from the business of dealing in coin-operated machines as such.

"Will the Comptroller be required to collect the additional permit fee on coin-operated machines for the last two quarters of the current year on previously issued permits under Article 13.02, Article 13.17, Section 27(8), Section 2 which amends Article 13.02 increasing the Annual State Permit Fee on coin-operated machines from \$10 to \$15."

Section 16(1) of Article 13.17 (House Bill 579, Chapter 497, Acts of the 61st Legislature, page 1606), reads as follows:

"The annual license fee for each type and place of business license under this article is \$300.00."

It is in Section 8 of such Article 13.17 that we find reference to the type and place of business that must be licensed under the Article. A portion of Section 8 reads as follows:

"(1) No person shall engage in business to manufacture, own, buy, sell, or rent, lease, trade, lend, or furnish to another, or repair, maintain, service, transport within the state, store, or import, a music coin-operated machine or a skill or pleasure coin-operated machine without a license issued under this Article.

" . . .

"(3) No license is required for a corporation or association organized and operated exclusively for religious, charitable, educational, or benevolent purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, to own, or lease or rent from another, a music or skill or pleasure coin-operated machine for the corporation's or association's exclusive use and in furtherance of the purposes for which it is established.

- "(4) No license is required for an individual to own a music or skill or pleasure coin-operated machine for personal use, and amusement in his private residence."

To engage in "business" is to engage in a "commercial enterprise". Webster's Third New International Dictionary. Although the recovery of a profit or the expectation thereof is not a necessary element of a "business", it is the opinion of this office that one who owns a coin operated machine and operates the same in his place of business or any other commercial enterprise in the hope or expectation of making a profit therefrom, or as a "loss leader" for his other business, as each of your situations imply, is engaged in the commercial enterprise or business of owning such machine. If the owner, referred to in your first question in situations (a), (b) and (c), does not come within any of the exceptions of Section 8(3) or 8(4), above quoted, then such owner in each of the three situations will be required to obtain the annual license referred to in Section 16(1) of Article 13.17.

In regard to your second question, House Bill 579 becomes effective on September 1, 1969 (90 days after the Legislature adjourned). The annual occupation tax on each coin-operated machine is raised from \$10.00 to \$15.00. The Legislature is not inhibited by the Constitution from raising the amount or rate of taxes at any time. Mann v. Gulf States Utilities Company, 167 S.W.2d 557 (Tex.Civ.App. 1942, error ref.); Attorney General's Opinion No. V-1246, 1951. In this instance, under Article 7052, V.C.S., the Comptroller has the duty of collecting the additional \$5.00 annual tax on a pro rata basis for the last two quarters of the current year. As pointed out in Attorney General's Opinion No. 0-3009, 1941, when the tax or license fee is due on an annual basis, a quarter must be treated as a full quarter. In other words, if the original \$10.00 tax has been paid, \$2.50 additional should be collected, so as to effect a complete collection of the 1969 annual tax.

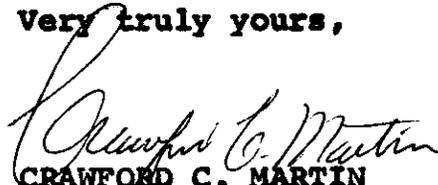
SUMMARY

An annual license fee under Section 16(1) of Article 13.17, Title 122A, Taxation-General, Vernon's Civil Statutes, House Bill No. 579, Chapter 497, Acts of the 61st Legislature, page 1606, will be required for the owner of a music coin-operated machine or a skill or pleasure coin-operated machine which are operated by him exclusively in a liquor store, bar, or cafe wholly owned and operated by him. The Comptroller should collect the additional \$5.00 annual occupation tax provided by the new

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amendment to Article 13.02, Title 122A, Taxation-General, V.C.S., for the balance of the current year after the effective date of the amendment (September 1, 1969) on a pro rata basis, meaning that under Article 7052, V.C.S., the additional sum of \$2.50 should be collected on each machine in order to effect full collection of the 1969 annual tax.

Very truly yours,


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APPROVED:
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