



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

October 17, 1974

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

Opinion No. H- 424

Re: Whether governmental
bodies and private persons
operating on federal proper-
ty must furnish bond required
under Art. 20.021(N)(1),
Taxation-General, V. T. C. S.

Dear Mr. Calvert:

You have submitted the following questions to us for an opinion:

1. Are governmental bodies which must collect the sales and use tax also required to furnish a bond or other security to the Comptroller pursuant to Art. 20.021 (N)(1), Tax. -Gen., V. T. C. S. ?

2. Are private individuals who sell taxable property from facilities located on federal property and which are operated under contractual agreements with federal government entities required to furnish a bond or other security to the Comptroller pursuant to Art. 20.021(N)(1), Tax. -Gen., V. T. C. S. ?

The 63rd Legislature added to the Limited Sales, Excise and Use Tax Act the requirement that a seller of taxable items must furnish a bond or other security to the Comptroller to secure payment of the taxes that must be collected under the Act. Acts 1973, 63rd Leg., ch. 345, p. 776. Article 20.021 (N)(1) provides in pertinent part:

Every person who holds a sales tax permit under this Chapter as of January 1, 1974, and is delinquent in the payment of any taxes, penalties and/or interest on January 1, 1974, and every applicant for a sales tax permit on or after January 1, 1974, shall furnish to the Comptroller a cash bond, a bond from a surety company chartered or authorized to do business in

the State of Texas, certificates of deposits, certificates of Savings or U.S. Treasury bonds or, subject to the discretion and approval of the Comptroller, an assignment of negotiable stocks or bonds, or such other security as the Comptroller may deem sufficient to secure the payment of taxes under this Chapter. Any surety bond furnished under this Paragraph shall be a continuing instrument and shall constitute a new and separate obligation in the penal sum named therein for each calendar year or a portion thereof while such bond is in force. Such bond shall remain in effect until the surety or sureties are released and discharged. The Comptroller shall fix the amount of such bond or security in each case, taking into consideration the amount of money that has or is expected to become due from such person under this Chapter and under the Local Sales and Use Tax Act.

. . .

"Person" is broadly defined in Art. 20.01(A) and included within its scope is "the United States or any agency thereof, this State, or any agency hereof, or any city, county, special district, or other political subdivision of this State to the extent engaged in the selling of items taxable under this Chapter."

In response to your first question, then, it appears that the Legislature intended to require any governmental body making sales subject to the Act to meet the security requirements of Art. 20.021(N)(1). Thus any governmental body which is collecting the sales tax, as a holder of a sales tax permit, must, under Art. 20.201(N)(1), also furnish whatever bond or other security the Comptroller deems necessary; governmental bodies holding sales tax permits are not excused from meeting this requirement simply because they are governmental bodies.

The answer to your second question is provided by the Buck Act, 4 U.S.C., Secs. 104-110, particularly Sec. 105:

(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.

This provision was passed by Congress to enable the states to impose sales taxes within federal enclaves. Humble Oil & Refining Company v. Calvert, 478 S.W.2d 926 (Tex. 1972). Thus private individuals who sell taxable items from facilities located on federal property are responsible for collecting the sales tax and, accordingly, would be required to furnish a bond or other security to the Comptroller under Art. 20.021(N)(1).

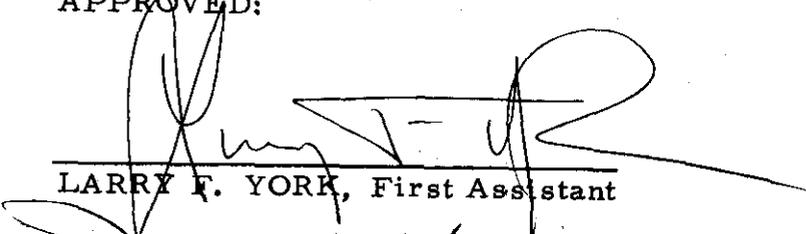
S U M M A R Y

Governmental bodies which hold sales tax permits and which collect the sales tax must also furnish a bond or other security to the Comptroller under Art. 20.021(N)(1). Private individuals who sell taxable items from facilities located on governmental property are responsible for collecting the sales tax and, accordingly, also would be required to furnish a bond or other security to the Comptroller under Art. 20.021(N)(1).

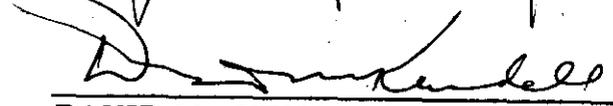
Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee