

March 13, 1939

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-448

Re: Are coin operated machines
for dispensing sanitary
napkins "service coin-
operated machines" and
exempt from the tax levied
by Art. 7047a-2?

We are in receipt of your letter of March 9, 1939, requesting our opinion as to whether coin-operated machines installed in ladies' rest rooms and which dispense sanitary napkins are "service coin-operated machines" and therefore exempt from the tax imposed by Article 7047a-2, Revised Statutes, on certain coin-operated machines.

Article 7047a-4 reads as follows:

"Gas meters, pay telephones, pay toilets, and cigarette vending machines which are now subject to an occupation or gross receipts tax and "service coin-operated machines" as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Section."

Article 7047a-2(d) reads as follows:

"The term 'merchandise or music coin-operated machine' as used herein shall mean and include every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending merchandise, commodities, confections or music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included

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within said term: candy machines, gum machines, sandwich machines, handkerchief machines, sanitary drinking cups, phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend merchandise, commodities, confections or music."

Article 7047a-2 (b) reads as follows:

"The term 'operator' as used herein shall mean and include any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in his or its place of business or upon premises under his or its control, any 'coin-operated machine' in this State."

As noted above machines which dispense "merchandise" are expressly brought within the class of machines subjected to the tax. "Service coin-operated machines" are exempted from the tax, but those machines which dispense merchandise are expressly excluded from the definition of such exempted machines.

Such napkins are commodities which are sold at every drug store. That same are merchandise is too plain to admit of argument. The machines referred to are not exempt from the tax.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*

Glenn R. Lewis
Assistant

ORL:R

APPROVED

Gerrard M. Mann
ATTORNEY GENERAL OF TEXAS