



100

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

April 12, 1939

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

Dear Sir:

Opinion No. O-576

Re: Does Ch. 41, General and
Special laws, of the 42nd
Leg., 2nd C. S. (1925)
Art. 7047, Subdivision 15)
repeal, amend, or in any
way affect Section 15,
Art. 7047, R. C. S. 1925.

By your letter of March 31, 1939, you direct our attention to Section 15, Article 7047, Revised Civil Statutes, 1925, levying an occupation tax on money lenders, and ask to be advised if such statute remains in full force and effect, despite the unconstitutional attempt by the Legislature to amend this Statute by Chapter 41, General and Special Laws, 2nd Called Session, 42nd Legislature, (Vernon's Annotated Civil Statutes, Article 7047, Subdivision 15).

This latter act was by our Court of Criminal Appeals in *Katz v. State*, 54 S. W. (2d) 130, declared in all things to be wholly unconstitutional and void. This holding was based upon a fatal variance between the caption and the body of the act, in that the caption purported to amend, by express language to that effect, Section 14 of Article 7047, Revised Civil Statutes, 1925, but instead of amending this Section of Article 7047, Revised Civil Statutes, the body of the amending act actually contained language which was intended to be an amendment of Section 15 of Article 7047, Revised Civil Statutes, 1925. By reason of the introduction of this new subject matter in the amendatory act not germane or pertinent to that contained in Section 14 of Article 7047, Revised Civil Statutes, 1925, the Court of Criminal Appeals in the cited case held the act unconstitutional as containing independent legislation upon a matter not expressed in the title of the act.

It is too plain for statement that an unconstitutional and void statute is, in the eyes of the law, considered as though

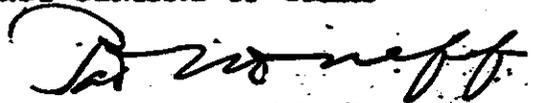
Hon. Geo. H. Sheppard, April 12, 1939, Page 2

it had never been passed. Consequently, it must be said that Chapter 41, General and Special Laws, 2nd Called Session, 42nd Legislature, possesses no life or efficacy to amend Section 15, Article 7047, Revised Civil Statutes, 1925. Moreover, it should be pointed out that there is nothing in the amending act, by way of a severable constitutional section, expressly repealing Section 15 of Article 7047, Revised Civil Statutes, 1925. Hence, it is our opinion that Section 15, Article 7047, Revised Civil Statutes, 1925, is today in full force and effect, according to the terms, scope, and tenor of its original enactment.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Pat M. Neff, Jr.
Assistant

PMN:H

APPROVED



ATTORNEY GENERAL OF TEXAS