OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Parks E. McKichael
County Attorney
Cass County
Linden, Texas

Dear Sir:

Opinion No. O-1126
Re: What tax must a person pay before exhibiting a calf to the public for admission?

We are in receipt of your letter of July 11, 1939, in which you request an opinion of this department upon the following questions:

"A citizen desires to exhibit to the public in the state of Texas a calf not connected with a circus, menagerie, show or other exhibition of any nature, where a fee for admission is demanded and received by the owner of said animal.

"What tax would the citizen be required to pay before exhibiting the animal to the public for admission?

"Would an additional tax or license be required under the law from the citizen exhibiting the animal aforesaid whenever he went into the corporate limits of a city?"

There can be no doubt concerning the right of the state to license, tax and regulate theatres and other places of public amusement, and it may confer that right on counties and municipalities. 40 TEX. JUR. 862.

Furthermore, annual license fees or occupation taxes are levied on public amusements which are

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more or less permanent, while exhibitions of a transitory nature are taxed for each day that admission is charged, or for each performance. ID., p. 863.

Article 7047, Vernon's Annotated Civil Statutes, Section 25, provides, in part:

> "(a) Menageries, Museum. - From every menagerie, waxworks, sideshow, or exhibition connected with or exhibiting or showing in connection with a circus where a separate fee for admission is demanded or received Ten Dollars ($10.00) for every day in which fees for admission are received; provided, that any museum, menagerie or zoological exhibition or combination thereof operated and maintained in any city or town and open for admission all day continuously, in which a charge for admission is demanded or received, an annual tax of Fifty Dollars ($50.00)." (Underscoring ours)

Section 26 of the same article reads as follows:

> "Waxworks, etc.- From every menagerie, waxworks, exhibition or display of any kind where a separate fee for admission is demanded or received, not connected with a theatre or circus, Two Dollars ($2.00) for every day on which fees for such admission are received." (Underscoring ours).

It is our opinion that the exhibition of a calf would properly be classified as a "zoological exhibition". Furthermore, we are of the opinion that the words "exhibition exhibit" in Section 26 would include a "zoological exhibition" of this type. Consequently, the exhibition of a calf not connected with a circus, menagerie, show or other exhibition of any nature, where a fee for admission is demanded and received by the owner of said animal might come within the purview either of the proviso of Section 25 of Section 26, both quoted above, the de-

termining factor being the time element involved in the exhibition.

If the calf is on exhibition in a city or town at a charge to the public "all day continuously" the year round, it would constitute a zoological exhibition of a permanent nature subject to the annual tax of Fifty Dollars ($50.00) provided in Sec. 25. The fact that it is not connected with or exhibited or shown in connection with a circus is immaterial in this instance, the subject matter of the proviso of Sect. 25, i.e., museum, menagerie, or zoological exhibition or combination thereof not being limited to those which are connected with a circus, but the proviso designates an annual tax for such types of display - whether connected with a circus or not - as are of a permanent nature.

On the other hand, where the zoological exhibition is clearly not connected with a circus, Sec. 26 would also apply, and a Two Dollar ($2.00) a day tax is levied therein for every day on which fees for such admission are received. This section would appear to cover the same subjects as the proviso in Sec. 25, since we have not seen fit to limit the coverage of the proviso to zooligical exhibitions connected with a circus.

It is true that our construction would make either the Fifty Dollar ($50.00) annual tax or the Two Dollar ($2.00) per day tax applicable, but we differentiate the two sections on the ground that the proviso in Sec. 25 would cover a permanent exhibit while an exhibition of a shorter duration of time would fall within the coverage of Sec. 26. The exhibitor or a calf would be entitled to pay the annual tax of Fifty Dollars($50.00) if the exhibition was permanent or in the event that the exhibition was temporary he would be entitled to pay the Two Dollar ($2.00) per day tax.

We do not believe that the Legislature intended that the exhibitor of an animal the year around

should be compelled to pay an occupation tax of $730.00. It is only where the exhibition is on a temporary basis that Sec. 26 of Art. 7047 applies with its Two Dollar ($2.00) per day tax. Of course, in all instances, we are assuming that fees for admission to the exhibition are charged and received.

As for a county occupation tax, Article 7048 of the Revised Civil Statutes, 1925, contains the authority for the levying of such a tax. It provides in part as follows:

> "Each commissioners court shall have . . . the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted; . . ."

Said section also contains the following pertinent provision:

> "The governing body of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the commissioners court."

From the above quoted provisions it is clear that a county occupation tax upon non-exempt occupations is legal in the event it does not exceed one-half of the amount of the State occupation tax.

We find nothing in the law to indicate that zoological exhibitions are exempt from a county occupation tax, and it is entirely possible that such taxes have been levied legally in certain counties of the state of Texas.

In respect to occupation taxes levied by municipalities, we call attention to Article 1015, Vernon's Annotated Civil Statutes. It provides:

> "The governing body shall also have power;
>
> " . . .
>
> "33. Trade taxes. - To tax all trades, professions, occupations and callings, the

taxing of which is not prohibited by the Constitution of this State; which tax shall not be construed to be a tax on property.

"36. . . .

"37. Peddlers, theaters, etc. - To license, tax and regulate or suppress and prevent hawkers, peddlers, pawnbrokers and keepers (of theatrical) or other exhibitions, shows and amusements.

"38. Circuses, etc. - To license, tax or regulate theaters, circuses, the exhibitions of common showmen, shows of any kind, and the exhibition of natural and artificial curiosities, caravans, menageries and musical exhibitions and performances.

" . . ." (Underscoring ours)

There is no question as to the authority of municipalities to tax an occupation such as the exhibition of a calf. Whether or not such occupation tax has been levied depends upon the ordinances of the municipality in which the calf is or will be exhibited.

Trusting that the above fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed) Dick Stout
Dick Stout
Assistant

DS:ob

APPROVED: AUGUST 26, 1939
GERALD C. MANN (Signed)
ATTORNEY GENERAL OF TEXAS

APPROVED:
Opinion Committee
By B. W. B.
Chairman