



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Tom Seay  
County Attorney  
Amarillo, Texas

Dear Sir:

Opinion No. 0-1486  
Re: Whether lien on personal property assigned to a national bank and presented by it for recording is subject to the stamp tax levied by Article 7047e, Vernon's Annotated Civil Statutes as amended by the 46th Legislature.

We are glad to comply with your letter of September 20, 1939, requesting our opinion in response to the following questions:

"Where a chattel mortgage is taken by a car dealer, and by him transferred or assigned to a National Bank, before recording such mortgage, and the Bank presents such chattel mortgage for record, is such lien instrument exempt from the tax levied by Article 7047e, R. C. S., as amended?"

Article 7047e, Vernon's Annotated Civil Statutes, as amended by the 46th Legislature, found at page 72 of Vol. 20, reads in part as follows:

"(a) Except as herein otherwise provided there is hereby levied and assessed a tax of Ten (10¢) Cents on each One Hundred (\$100.00) Dollars or fraction thereof, over the first Two Hundred (\$200.00) Dollars, on all notes and obligations secured

by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; providing further that should the instrument filed in the office of the County Clerk be security of an obligation that has property pledged as security in a State or States other than Texas, the tax shall be based upon the reasonable cash value of all property pledged in Texas in the proportion that said property in Texas bears to the total value of the property securing the obligation; and, providing further that, except as to renewals or extensions of accrued interest, the provisions of this section shall not apply to instruments given in renewal or extensions of instruments theretofore stamped under the provisions of this Act or the one amended hereby, and shall not apply to instruments given in the refunding of existing bonds or obligations where the preceding instrument of security was stamped in accordance with this Act or the one amended hereby; provided further that the tax levied in this Act shall apply to only one instrument, the one of the greatest denomination, where several instruments are contemporaneously executed to secure one obligation; and provided further that when once stamped as provided herein, an instrument may be recorded in any number of counties in this State without again being so stamped. This section shall not apply to instruments, notes, or other obligations taken by or on behalf of the United

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States or of the State of Texas, or any corporate agency or instrumentality of the United States, or of the State of Texas in carrying out a governmental purpose as expressed in any Act of the Congress of the United States or of the Legislature of the State of Texas, nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products, or to livestock or farm implements, or an abstract of judgment.

Both this and the preceding administration of the Attorney General's office have expressed the opinion that national banks were exempt from paying the stamp taxes levied under Article 7047e before the amendment by the 46th Legislature. This exemption comes, not from the language of the taxing statutes, but from the inability of the State to levy such a tax against national banks. Federal Land Bank v. Crosland, 43 Supreme Court 385; Des Moines National Bank v. Fairweather, 44 Supreme Court 23; First National Bank v. Anderson, 46 Supreme Court 135; Gully v. First National Bank, 81 Fed. (2d) 502; Section 548, Title 12, U. S. C. A. ; opinion by H. L. Williford, Assistant Attorney General, to Lockhart, March 21, 1938; our opinion No. 0-267, dated February 25, 1939. In our opinion No. 0-874 addressed to Honorable Z. Gossett, Banking Commissioner of Texas, we affirmed such holding as to the amended statute. In our conference opinion No. 3081 dated June 17, 1939, addressed to the State Treasurer, we expressed the view that this is a privilege tax.

Since the tax levied by said article is not one upon property, and never accrues until the instrument of security is presented for record, and since national banks are not subject to the tax levied by this article, the instruments mentioned by you are exempt from the tax, and your question must be answered in the affirmative. This is in accord with the opinion of H. L. Williford, Assistant Attorney General, dated

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May 27, 1938, addressed to Honorable Ned McDaniel,  
County Attorney, Wichita Falls.

Yours very truly

ATTORNEY GENERAL OF TEXAS

(signed)

By

Glenn R. Lewis  
Assistant

GRL:LW

APPROVED OCT 30, 1939

(signed)

GERALD C. MANN  
ATTORNEY GENERAL OF TEXAS

APPROVED  
opinion committee  
By BWB  
chairman