



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Hon. George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-1666

Re: Whether 20% award tax is due upon
prizes given at Elks Lodge party.

In your letter of December 12, 1939, you submit
the following facts:

"B. P. O. E., Elks Lodge No. 216, San Antonio, have planned a Christmas party and dance to be held December 19 which is open to the general public and at which time they will give prizes consisting of two automobiles, a frigidaire, a trip to Cuba with expenses paid as well as many other cash and merchandise prizes. The purpose of the party, to which an admission is charged, is to raise money for crippled and underprivileged children and many other charitable organizations. The prizes will be awarded under the following procedure. Tickets are being sold by means of a punch board to the general public at prices ranging from 1¢ to 25¢. The ticket entitles the purchaser to a chance on one or more prizes.

"The purchaser punches one of the holes in the punch board which may contain any number from number 1 to number 25. The purchaser is required to pay for the ticket in an amount equal to the number he punches from the board. As an example, if he punches number 1, he is required to pay 1¢ for the ticket; if he punches number 25, he is required to pay 25¢ for the ticket.

"The night of the party the tickets bearing the purchasers' names will be placed in a container or receptacle from which they will be

drawn by some disinterested person, one by one, until all the prizes have been awarded. An admission charge is also made to the party but the winner does not have to be present when the prizes are awarded in order to receive a prize."

In your letter of December 15, 1939, you give us the additional information that the party is not to be held in the lodge hall of the Elks Lodge, but will be held upon the stage of the Municipal Auditorium of the City of San Antonio.

You request our opinion as to whether or not the prizes to be so awarded will be subject to the 20% award tax levied by Article 7047f, Vernon's Civil Statutes, which reads, in part, as follows:

"(a) Every person, firm, or corporation conducting a theatre, place of amusement, or any business enterprise in connection with the operation of which a prize in the form of money or something of value is offered or given to one or more patrons of such theatre, place of amusement, or business enterprise, and not given to all patrons thereof paying the same charge for any certain service, commodity, or entertainment, shall make a verified monthly report on the twenty-fifth day of each month to the Comptroller of Public Accounts of the State of Texas, showing the amount of money so given in prizes, and the value of all prizes or awards so given in connection with such business during the next preceding month.

"(b) There is hereby levied a tax equal to twenty per cent (20%) of the value of all such money, prizes, and awards given in connection with the operation of each and all of the foregoing business enterprises, and at the time of making the report to the Comptroller of Public Accounts, the owner or operator of any such business shall pay to the State Treasurer such tax upon the total amount of money, prizes, and awards so given during the next preceding month. * * *"

From a reading of the above statute, it is seen that not every award or prize is taxable thereunder. The statute does not purport to levy such tax unless the prize is offered or given in connection with the operation of a theatre, place of amusement, or some business enterprise. We have heretofore pointed out that the mere occasion of making the award cannot in itself provide the business enterprise in connection with the operation of which such prize is given. Tax laws are to be construed strictly. *Yellow Cab Company v. Pengilly*, 11 S. W. (2d) 560; *State v. San Patricio Canning Company*, 17 S. W. (2d) 160.

It is our opinion that these prizes will not be subject to the tax of Article 7047f, Vernon's Civil Statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By
(Signed) Glenn R. Lewis
Assistant

GRL: pbp

APPROVED- Dec. 23, 1939
(Signed) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED -- Opinion
Committee - By BWB,
Chairman