



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Lower Colorado River Authority  
Austin, Texas

Gentlemen:

Opinion No. 0-3257  
Re: Validity of sales contract containing provision for prorating taxes.

Your letter of March 10, 1941, advises that the Authority has entered into a purchase sales contract with the Central Power & Light Company, dated as of June 19, 1940, which contract provides that the 1941 ad valorem, gross receipts, and pole rental taxes shall be prorated and adjusted "so that the Company shall be obligated to pay only the tax apportionable to the part of the calendar year which shall have elapsed prior to said closing date." You advise that the purchase sales contract mentioned will be consummated on March 15, 1941, and that at that time the parties to the contract propose to enter into a closing contract which will provide in substance as follows:

"The Company having paid to the Authority its prorated part of ad valorem taxes, gross receipts taxes and pole rental taxes for the year 1941 upon the property conveyed, the Authority agrees to indemnify and save harmless the Company, its successors and assigns, from and against the imposition and/or payment of any of said taxes for the year 1941 upon all of the properties for which proration of taxes has been made as aforesaid."

You advise that the question has been raised as to whether this agreement upon the part of the Authority would be valid, in view of our letter of November 22, 1940.

Our letter of November 22, 1940, related to an entirely different situation. There, your Authority was desirous of assisting certain counties, school districts and municipalities

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by voluntarily assuming the obligation to compensate such counties, school districts and municipalities to the extent of the amount of taxes formerly paid them on properties belonging to the Texas Power & Light Company and conveyed by said company to the Authority by deed dated September 1, 1931.

The Act creating the Authority confers upon it the right to acquire, by purchase, any and all property of any kind, real, personal or mixed, within or without the boundaries of the district, necessary or convenient to the exercise of the powers, rights, privileges and functions conferred upon the Authority by the Act. The agreement involved in the instant case is an execution of such power, and the agreement relating to the prorating of taxes upon the properties purchased for the year 1941 has to do with the consideration to be paid for the properties purchased, affording, in effect, a measure by which a certain portion of the consideration to be paid for the properties by the Authority is to be determined. The element of gratuitous payment, involved and considered in our letter of November 22, 1940, is absent in this situation. It is our opinion that the Authority has the power to enter into the agreement for prorating the taxes, upon the properties to be acquired by purchase by the Authority from the Central Power & Light Company, for the year 1941.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*R. W. Fairchild*

R. W. Fairchild  
Assistant

RWF:db

MAY 14, 1941  
*E. S. Mann*  
ATTORNEY GENERAL OF TEXAS

