



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~XXXXXXXXXX~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

*Superseded by
art. 29d. v.c.s.*

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

Dear Sir:

Opinion No. 0-3640

Re: Gross receipts tax due by
Utilities Company operating in
the city of Borger, which had
less than 10,000 inhabitants ac-
cording to preliminary census
reports published prior to Jan-
uary 1, 1941, but which has more
than 10,000 according to correct-
ed census figures.

In your letter of May 31, 1941, you advise us that the first release by the local census supervisor (1940) gave the town of Borger less than 10,000 population, which would class it in the 2500 to 10,000 population bracket, but that this was corrected by Washington release on January 11, 1941, by rating the city as having a population of 10,018.

You request our opinion as to whether the tax levied by Article 7060, Revised Civil Statutes, will apply to Borger as being a city of more than 10,000 inhabitants for the quarter beginning January 1, 1941, based on receipts for the quarter ending December 31, 1940, or will the tax under the higher bracket not apply until the quarter beginning April 1, 1941.

Upon inquiry at your office we are advised that the report by the Utilities company in question was not filed in the office of the Comptroller until January 13, 1941.

Said Article 7060 reads in part as follows:

"Each individual, company, corporation or association, owning, operating or managing or controlling any gas, electric light, electric power or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power or water, shall make quarterly, on the first days of January, April, July and

October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric lights, electric power or water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any such incorporated town or city of twenty-five hundred (2500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last United States Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to seven-tenths of one per cent (0.7 of 1%) of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last United States Census next preceding the filing of said report, the said individual, company, corporation or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to one and three-eighths per cent (1 3/8%) of said gross receipts, as shown by said report."

The preliminary report or release was one of which the officials and the public might take notice and upon which reliance could be placed. In other words, it was a sufficient Federal Census. *Holcomb vs. Spikes*, 232 S.W.891; *Ervin vs. State*, 44 S.W. (2d) 380. Under Article 7060 the report of the taxpayer was due on January 1, 1941, regardless of the fact that no penalty would be incurred for failure to file for a period of thirty days. See Arts. 7074 and 7075, Revised Civil Statutes. In providing that the tax should be graduated "according to the last United States Census next preceding the filing of said report," we think it was contemplated that the report would be filed on its due date. In our opinion the lower bracket will apply in this instance.

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Glenn R. Lewis
Glenn R. Lewis
Assistant

GRL:lh:wc

APPROVED JUL 12, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

This Opinion Considered And Approved In Limited Conference