



**THE ATTORNEY GENERAL  
OF TEXAS**

Gerald C. Mann  
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ATTORNEY GENERAL

**AUSTIN 11, TEXAS**

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

Dear Sir:

Opinion No. 0-4128  
Re: Construction of Article  
VI, House Bill 8, 47th  
Legislature.

We acknowledge receipt of your request for an opinion, which request reads in part as follow:

"We have received a letter from the Mid-Tex Motors, Inc., two paragraphs of which read as follows:

" We sold a Mr. C. H. Ruebeck of Waco a new car, and took a straight note on the car with no mortgage. This note was only to run thirty days, so for that reason, we wanted the title on the car in our name until the note was paid, as it involved the sum of one thousand dollars.

" This car was never driven or operated by us. We registered it in our name and paid the 1% tax, furnished by Mr. Ruebeck, and as he has now paid off the note, we are trying to transfer it to him."

We have also been advised that the Tax Collector refuses to accept a transfer to Mr. C. H. Ruebeck until the tax is paid on such transfer. We have also been furnished with a photostatic copy of the registration receipt and tax receipt.

The registration receipt and the tax receipt revealed that the automobile in question was purchased by Mid-Tex Motors. Section 1 (a) of Article VI of House Bill 8, 47th Legislature, provides as follows:

"Section 1. (a) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to one (1) per cent of the total consideration paid or to be paid to the seller by the buyer, which consideration shall include the amount paid or to be paid for such motor vehicle and all accessories

attached thereto at the time of the sale, whether such consideration be in the nature of cash, credit, or exchange of other property, or a combination of these. In the event the consideration received by the seller includes any tax imposed by the Federal Government, then such Federal tax shall be deducted from such consideration for the purpose of computing the amount of tax levied by this Article upon such retail sale."

It will be noted that the tax is levied on every "retail sale" of every motor vehicle sold in this State. Subsection(b) of Section 3, Article VI. House Bill 8, supra, defines "retail sales" as being all sales except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use.

Section 5 (a) of House Bill 8, supra, provides that at the time the tax is paid the purchaser shall file with the Tax Collector an affidavit setting forth the total consideration and Section VI of House Bill 8, supra, provides that the Tax Collector shall issue to the person paying the tax his receipt therefor.

As above stated the registration receipt and the tax receipt both reveal that the purchaser was the Mid-Tex Motors. In view of the fact that the law requires an affidavit be filed by the purchaser we must assume that the Tax Collector complied with that requirement of law and that the tax receipt issued was based upon such affidavit.

Therefore, insofar as the payment of the tax is concerned the record of the transaction reveals that Mid-Tex Motors was the purchaser and that it paid the tax as such purchaser.

We realize that the sale was made in good faith but that for some reason best known to itself Mid-Tex Motors chose to not disclose all of the facts in regard to the sale of the motor vehicle to the Tax Collector. The law requires that the tax be paid before the vehicle can be registered or transferred. The Mid-Tex Motors presented the affidavit as required by law and thereupon the Tax Collector performed the duty placed upon him by law on what the record before him disclosed and received the tax and issued the receipt.

After Mr. Ruebeck paid his note to Mid-Tex Motors it issued him a transfer and the Tax Collector refused to accept it unless the tax was paid. Section 5, House Bill 8, supra, expressly prohibits the Tax Collector from accepting the transfer unless the tax is paid. In this case the tax was paid upon a transfer or sale of the motor vehicle from Mid-Tex Motors to itself and no tax has been paid on the sale of the motor vehicle from Mid-Tex Motors to Mr. Ruebeck.

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We are therefore of the opinion that the tax must be paid on the transfer from Mid-Tex Motors to Mr. Ruebeck and that the Tax Collector is not authorized by law to accept such transfer until the tax is paid.

You have advised us that the money to pay the tax was furnished by Mr. Ruebeck. We think that the source of the money is immaterial because the record did not disclose that he was the purchaser.

We do not imply by this opinion that any intentional wrong was done by Mid-Tex Motors and realize that it chose the course it took to protect itself on the unpaid balance. The agreement to handle the sale, registration and payment of the tax in such manner was made by the motor company and Mr. Ruebeck and they must be bound by the consequences.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ Richard H. Cocke

By

Richard H. Cocke  
Assistant

RHC:db:ldw

APPROVED JAN 2, 1942  
s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

APPROVED  
OPINION  
COMMITTEE  
BY BWB  
CHAIRMAN