



In opinion No. 0-4731, this department has construed this statute as levying an occupation tax. Section 1, Article VIII, of our Constitution provides that the Legislature may "impose occupation taxes, both upon natural persons and upon corporations, other than municipal." (Emphasis ours) Therefore, the City of Dallas is not liable for the tax on cement under the facts submitted in your letter.

In the case of State v. City of El Paso, 143 S.W. (2d) 366, the Supreme Court held that the motor fuel tax was not an occupation tax, and made this further distinction: "It follows that the tax here sued for is manifestly a tax on using motor fuel in the operation of motor vehicles on the public highways of this State." Since the cement tax is an occupation tax, the constitutional exemption of municipal corporations from occupation taxes applies.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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TBD:AMM:wc

APPROVED OCT 19, 1942  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

This Opinion Considered And Approved In Limited Conference