



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILLIAM WILSON~~
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-5483

Re: Whether Section 2 of House Bill No. 677, Acts of the Regular Session of the 48th Legislature, repeals Article 7047a, R. C. S.

We have received and considered your opinion request of July 30, 1943, wherein you state:

"I shall thank you to advise this department whether Section 2, House Bill 677, Acts of the Regular Session of the 48th Legislature, repeals Article 7047a, R. C. S. 1925."

The Section in question reads as follows:

"Sec. 2. That subsection 7 of Article 7047 of the Revised Civil Statutes of the State of Texas, 1925, as amended by Section 1 of House Bill No. 251, Chapter 212 of the General Laws of the Regular Session of the Forty-second Legislature, 1931, is hereby amended to read as follows:

"17. Brokers and Factors. From every person, acting for himself or on behalf of another, engaged in the business or occupation of a Broker or Factor, whether he is principally engaged in such business or not, there shall be collected Ten Dollars (\$10.00) per year. A "broker" or "factor," for the purpose of this subsection, is every person who, for another and for a fee, commission or other valuable consideration, rents, buys, sells, or transfers, for actual spot or future delivery, or negotiates purchases or sales or transfers of stocks, bonds, bills of exchange, negotiable paper, promissory notes, bank notes, exchange, bullion, coin, money, real estate, lumber, coal, cotton, grain, horses, cattle, hogs, sheep, produce

and merchandise of any kind; whether or not he receives and delivers possession thereof; provided that this subsection shall not apply to a salesman who is employed on a salary or commission basis by not more than one retailer, wholesaler, jobber, or manufacturer, nor shall this subsection apply to or be construed to include persons selling property only as receivers, trustees in bankruptcy, executors, administrators, or persons selling under the order of any Court, or any person who is included within the definition of any other occupation and is paying or subject to the payment of a tax under any other subsection of this Act; however, this exemption shall not apply to any individual engaged in more than one occupation as defined by the other subsection of this Act.'" (Emphasis ours).

Article 7047a provides:

"There shall be levied on and collected from every person, firm, corporation, or association of persons owning, operating, managing, controlling, or pursuing the business or occupation of any cotton exchange quotation service in this State, or furnishing quotations on the stock market on grain, cotton, or other commodities, or stocks and bonds, and who maintain an office or place of business, or branch office, and have a bulletin board or other means of furnishing quotations on the stock market, an annual State occupation tax of Two Hundred and Fifty (\$250.00) Dollars, which shall be paid annually in advance, or as otherwise provided by law for the payment of occupation taxes, on each and every separate establishment, office, branch office, or place of business; provided, the tax herein levied shall be only One Hundred (\$100.00) Dollars for each person, firm or corporation which is a member of only one commodity exchange; provided, this Article shall not apply to any person, firm or corporation, or association of persons who furnish gratuitously market quotations to any person desiring the same and who are not engaged in the business of furnishing market quotations and without intent to solicit or accept orders for contracts, or contracts for future deliveries or sales of any commodity, stock or bonds; provided, further, any person, firm or corporation liable for a tax under this Article shall not be required to pay the tax under Sections 8 and

12 of Article 7047, but shall pay the tax provided by this Article; provided, further, each county or city in which same is operated may levy one-half the occupation tax herein provided for in the manner now provided by Article 7048." (Emphasis ours).

In no way does Section 2 of House Bill No. 677 expressly purport to repeal Article 7047a; neither do we think that such repeal is accomplished by implication. As can readily be seen, the two acts levy occupation taxes upon different things: The former affects, with certain exceptions, persons "engaged in the business or occupation of a Broker or Factor"; the latter relates, again with stated exceptions, to persons or associations "pursuing the business or occupation of any cotton exchange quotation service" or "furnishing quotations on the stock market on grain, cotton, or other commodities, or stocks and bonds." No conflict can possibly exist between these two acts, and without such a conflict a repeal by implication is impossible. 39 Tex. Jur. § 73. If the business of a broker or factor be considered as being included within that of furnishing stock exchange quotations, the underlined proviso to Section 2 of House Bill No. 677 operates to harmonize the two statutes and to make the business taxable only under Article 7047a. On the other hand, if the two businesses are considered distinct but are conducted by the same individual, the one is taxable under Section 2 of House Bill No. 677 and the other is taxable under Article 7047a. In this situation no repeal by implication is possible since the two acts and the taxes levied therein relate to different subjects, and, as is said in 39 Tex. Jur. § 76:

"There can be a repeal by implication only when two acts or statutory provisions are in parimateria, that is, when they treat of the same matters or their subject and object are the same."

Consequently, you are respectfully advised that Section 2 of House Bill No. 677 in no way operates to repeal Article 7047a.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/R. Dean Moorhead
R. Dean Moorhead
Assistant

RDM:fo:wc

APPROVED AUG 6, 1943
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman