OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-6365
Re: Liability of the San Antonio Independent School District to pay an occupation tax as provided by Section 32, Article 7047, V.A.R.C.S.

You wrote this office concerning the liability of the San Antonio Independent School District for an occupation tax for the operation of a baseball park known as "Tech Field." We found it necessary to request more information, and on June 21, 1945, we received your second letter which more fully develops the facts and from which we quote:

"1. The baseball park, which is owned by the San Antonio Independent School District, is not used for school purposes, except for two or three Junior High School Football Games during the Fall season of the year. The Alamo Stadium at San Antonio is used for all public school athletic contests.

"2. For a number of years, before the War, the Texas League Team of San Antonio, leased the baseball park from the San Antonio Independent School District at a rental of $7,500.00 per season. The San Antonio, Texas League Club paid the State Occupation tax each year.

"3. Since the San Antonio, Texas League Baseball Club ceased their activities, the San Antonio Independent School District has been renting the baseball park to various commercial baseball teams for a percentage of the gate receipts collected at each game. The San Antonio Independent School District, collects all admissions paid to the ballgames played by the local teams, and deducts a percentage

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for rental of the ball park before remitting the balance of the gate receipts to the local team.

"3. The San Antonio Independent School District also rents the baseball park to out of state professional baseball teams.

"4. I have been advised that the proceeds derived from the rental of the baseball park, is used for liquidating outstanding bonds of the Alamo Stadium, which is also owned by the San Antonio Independent School District. ..."

Article 7047, providing for a tax on certain occupations, provides:

"There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows:

".....

"32. Baseball Parks. -- From every owner or lessee of a baseball park where admission fees are charged in cities or towns of less than ten thousand (10,000) inhabitants, or within five (5) miles, thereof, an annual tax of Ten ($10.00) Dollars; in cities or towns of ten thousand (10,000) and less than twenty-five thousand (25,000) inhabitants, or within five (5) miles thereof, an annual tax of Twenty-five Dollars ($25.00); in cities or towns of twenty-five thousand (25,000) inhabitants and less than fifty thousand (50,000) inhabitants, or within five (5) miles thereof, an annual tax of Fifty Dollars ($50.00); in cities or towns of fifty thousand (50,000) inhabitants or more, or within five (5) miles of any such city or town, an annual tax of One Hundred Dollars ($100.00); <u>provided</u>,

> that this schedule shall not apply to baseball parks owned or maintained in good faith by educational institutions located in this State." (Emphasis added)

Section 1 of Article VIII of the Constitution authorizes the Legislature to levy an occupation tax. This Section reads, in part, as follows:

> "... It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. ..." (Emphasis added)

Independent school districts have been variously defined by the Supreme Court as "political corporations" (Lewis v. Independent School Dist. of City of Austin, 161 S.W. (2d) 450); "municipalities" (Harlingen Independent School Dist. v. C. H. Page and Bro., 48 S.W. (2d) 983); "local public corporations of the same general character as municipal corporations" or "quasi-municipal corporations" (Love v. City of Dallas, 40 S.W. (2d) 20). Since an independent school district is a local corporation of the same general character as a municipal corporation, it is our opinion that such districts come within the constitutional provision which inhibits the Legislature from imposing an occupation tax on municipalities. Therefore, the San Antonio Independent School District may not be required to pay an occupation tax on its baseball park.

We trust that the foregoing fully answers your inquiry.

Very truly yours

ATTORNEY GENERAL OF TEXAS

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