



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable George W. Cox  
State Health Officer  
Texas State Board of Health  
Austin 2, Texas

Dear Sir:

Opinion No. C-7284

Re: Whether bedding manufacturers located outside of the State of Texas, who sell their products in the State of Texas, are required to comply with the permit provisions of the Texas Bedding Law (4476A).

Your letter of recent date requesting an opinion from this department on the above subject matter is as follows:

"We refer to the Texas Bedding Law (4476A) in asking your opinion on the following question:

"We should like to know if manufacturers of bedding located outside of the state of Texas, who sell their products in the state of Texas, are required to comply with the permit provisions of the Texas Bedding Law (4476A).

"Your opinion on the above question will be appreciated."

We quote the following pertinent provisions of Article 4476a, V.A.C.S.:

"Section 1. (c). The term 'person' as used in this Act shall include persons, partnerships, companies, corporations and associations.

\* \* \*

"Section 6. (a). No person shall engage in the business of manufacturing, repairing or renovating any bedding unless he shall have obtained a permit from the Department.

Hon. George W. Cox - Page 2

"(b). No person shall be considered to have qualified to apply an acceptable germicidal process until each such process has been registered with and approved by the Department, after which a numbered permit shall then be issued by the Department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of the permit holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the treatment device. Holders of permits to apply germicidal treatment shall be required to keep an accurate record of all materials which have been subjected to germicidal treatment, including the source of material, date of treatment, and name and address of the buyer of each, and such records shall be available for inspection at any time by authorized representatives of the Department.

"(c). For all initial permits issued, as required by the preceding paragraph (a) of this Section, there shall, at the time of issuance thereof, be paid by the applicant to the Department, a fee of Five (\$5.00) Dollars. An annual renewal charge of Two and 50/100 (\$2.50) Dollars shall be paid to the same Department.

"(d). For all initial permits issued, as required by the preceding paragraph (b) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Twenty-five (\$25.00) Dollars. An annual renewal charge of One (\$1.00) Dollar shall be paid to the same Department.

"(e). Any permit issued in accordance with the provisions may be revoked by the State Health Officer upon proof of violation of any of the provisions of this Act. A reissuance of said permit shall be subject to provisions as set forth for an initial permit.

"Section 7. (a). No person shall manufacture, renovate, sell or lease or have in his possession with intent to sell or lease in the State of Texas, any bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by this Department.

Hon. George W. Cox - Page 3

"(b). The Department shall register all applicants for stamps and assign to every such person a registration number, which thereafter shall constitute his identification record, and said identification shall not be used by any other person.

"(c). Adhesive stamps as provided for by this Act shall be furnished by the Department in quantities of not less than five hundred (500), for which the applicant shall pay at the rate of Five (\$5.00) Dollars for each five hundred (500) stamps. The State Health Officer is hereby authorized to prepare and cause to be printed, adhesive stamps which shall contain a replica of the seal of the State of Texas, the registry number of the person applying therefor, and such other matter as the State Health Officer shall direct."

We quote the following from our opinion No. C-1258:

"Reviewing the provisions of the Bedding Law. . . we find a law passed ostensibly for safeguarding health which regulates the manufacturing, repairing and renovating, and selling of bedding, i.e., 'mattresses, pillows, bolsters, feather beds and other filled bedding of any description,' (Sec. 1 (a) of Article 4476a) in the following ways:

- "1. requiring "a substantial white cloth tag" bearing specific information on all bedding manufactured for original sale or resale,
- "2. requiring germicidal treatment of all second-hand material,
- "3. requiring a permit of all persons engaged in the business of manufacturing, repairing or renovating bedding or applying a germicidal process,
- "4. requiring the affixation of stamps procured from Board of Health to the "white cloth tag" on all bedding,
- "5. prohibiting any person from manufacturing, repairing or renovating into bedding or bedding discarded materials obtained from dump-grounds, junk yards, or hospitals within or without the State of Texas."

Sen. George W. Cox - Page 4

"Bedding undoubtedly is related to the public health and comfort, and any reasonable regulation of the manufacture, renovating and selling of bedding for sanitary purposes would be a means having a substantial relation to the end sought to be accomplished, namely, the protection of the public health.

"The requirement of a permit or license to engage in a business or occupation is one of the oldest and most universally recognized forms of valid police regulation.

\* \* \*

"We find that Article 4476a is a regulatory enactment within the constitutional limitations of the state's police power, designed to promote the health, comfort, and welfare of the public. The provisions of the Act are not unreasonable, arbitrary, or capricious, but have a substantial relation to the objective of safeguarding the public health. On the other hand, the restrictions and regulations of the Act are within proper limits and in no way impair any fundamental rights of every person to pursue a lawful business or occupation and to use and enjoy his private property by any reasonable and proper method. The bedding business is subject to regulation under the police power, and the Texas Bedding Law does not amount to an exercise of the police power incommensurate with the duty and obligation of the Legislature to provide for the people in their health, safety, comfort, or is not inconsistent with private property rights."

We are unable to find any provision in Article 4476 exempting foreign manufacturers from the operation of this Act. On the contrary, the Legislature has shown a contrary intent by expressly stating that no person (as defined by Section 1 (c)) shall be engaged in the business of manufacturing, repairing or renovating any bedding unless he shall have obtained a permit.

Therefore, it is the opinion of this department that foreign manufacturers who intend to sell bedding in this State must comply with the permit provisions of Article as well as domestic manufacturers. To hold otherwise would, to a degree, be defeating the very purpose of its enactment, to wit, regulating the manufacture and sale of bedding to the object of safeguarding the health

Hon. George W. Cox - Page 3

of the citizens of this State.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *J. C. Davis, Jr.*  
J. C. Davis, Jr.  
Assistant

APPROVED  
3, 1946

*[Handwritten signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By *John Reeves*  
John Reeves

JR:djm

