



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

December 30, 1947

Honorable Paul H. Brown
Secretary of State
Austin, Texas

Opinion No. V-466

ATTN: Wm. E. Stapp, Chief
Charter Division

Re: The franchise taxes to be collected from a corporation chartered to exercise both of the powers enumerated in Sec. 1 of Art. 1302d, V. C. S.

Dear Sir:

Your request for the opinion of this Department is as follows:

"This office has received and filed a charter for a particular corporation organized under Article 1302d, as amended, 1947. The corporation has for its purpose clause both subdivisions of Section 1 of that Article.

"This office required the payment of two franchise taxes. The amount so paid was paid under protest, the attorneys for that corporation maintaining that Article 7084f requires only one-fourth of the original amount for each additional purpose.

"In connection with this question, see Senate Bill 134, Acts of 1947, 50th Legislature, Chapter 237, Section 1. See also Article 1302d, Section 2 of this Article, prior to amendment.

"Should this office collect duplicate franchise tax amounts, or one and one-quarter franchise taxes, or only one franchise tax?"

Article 1302d, V. C. S., was first enacted in 1945, as Chapter 252, Acts of the 49th Legislature, and is as follows:

"Section 1. Corporations may be formed in the manner provided by general law, to exercise either or both of the following powers:

"(a) To buy livestock, poultry, and products of ranch, farm, dairy and creamery, and the by-products thereof, and manufacture, process, and sell such products and by-products.

"(b) To buy, manufacture, and sell feeds, fertilizers, insecticides and fungicides.

"Sec. 2. Any corporation which includes in its charter or any amendment thereto both of the powers named in Section 1(a) and (b) hereby shall pay the franchise tax provided by law for each of said powers or purposes. No corporation authorized under the provisions of this Act shall be permitted to own or operate more than one establishment or business under the same charter without paying the chain store tax provided in Chapter 400, Acts of the First Called Session of the Forty-fourth Legislature, as amended, on each such establishment or place of business from which it makes sales of any such products or by-products. This Section shall not apply to associations organized under Chapter 8, Title 93, of the Revised Civil Statutes of Texas of 1925, controlling Marketing Associations."

Section 1 of Chapter 252, Acts of the Forty-ninth Legislature, was amended by Chapter 237, Acts of the Fiftieth Legislature, 1947, as follows:

"Section 1. That Section 1 of House Bill No. 375, Chapter 252, Acts of the 49th Legislature of the State of Texas, Regular Session, 1945, page 390, be and the same is hereby amended so as hereafter to read and provide as follows:

"Section 1. Corporations may be formed in the manner provided by General Law, to exercise either or both of the following powers:

"(a) To buy livestock, poultry, and products of ranch, farm, dairy and creamery, and the by-products thereof, and manufacture, process and sell such products and by-products;

"(b) To buy, manufacture, and sell feeds, fertilizers, insecticides, fungicides, soaps and cleansers."
(Emphasis added)

"Sec. 1a. Any corporation which has heretofore adopted in its charter or in its permit to do business in Texas the powers enumerated in Section 1 of House Bill No. 375, Chapter 252, Acts of the Regular Session of the 49th Legislature, shall have and may exercise the powers enumerated in Section 1 of this Act."

It will be noted that only Section 1 was amended. The act of the 50th Legislature begins: ". . . That Section 1 of H. B. 375 . . . be and the same is hereby amended so as hereafter to read and provide as follows. . . ." The Legislature did not amend the whole chapter. Under Section 36 of Article 3 of the Texas Constitution, a section of a law may be amended, reenacted, and published without reenacting the whole statute.

The amendment, therefore, in no way changed the effect of Section 2 of the Act of the Forty-ninth Legislature which required any corporation including in its charter both of the powers named in Section 1(a) and (b) to pay the franchise tax provided by law on each of said powers or purposes, and that provision of Section 2, as well as the remainder of said Section, is still in full force and effect.

That portion of Article 7084 referred to in your request is as follows:

"Art. 7084. . . Sec. (f) Corporations which are now required to pay a separate franchise tax for each purpose or business authorized by their charters, shall hereafter pay only the tax provided hereunder for one purpose, and one fourth (1/4) of such amount for each additional purpose named in their charters. . . . As amended Acts 1941, 47th Leg., p. 269, ch. 184. Art. VIII, § 1."

It will be noted that the foregoing Act was passed in 1941 and specifically stated that corporations which were then required to pay a franchise tax for each purpose authorized by their charters should pay the tax on only one of such purposes and an additional one-fourth of such amount for each additional purpose. The passage of Chapter 252, Acts Forty-ninth Legislature, however, created an exception to Section (f) of Article 7084 to the extent that any corporation having both purposes authorized by Chapter 252, Acts of the 49th Legislature, was required to pay the franchise tax on each of said purposes.

The Secretary of State should therefore require the payment of the franchise tax provided by law for each of said powers or purposes in accordance with the provisions of Section 2, Article 1302d, V. C. S.

SUMMARY

Corporations organized or doing business under both of the purpose clauses included in Section 1 of Article 1302d, V. C. S., are required to pay a franchise tax for each of said purposes as provided by Section 2 thereof.

Yours very truly

ATTORNEY GENERAL OF TEXAS

C. K. Richards

By

C. K. Richards
Assistant

CKR/JCP

APPROVED:

Price Daniel
ATTORNEY GENERAL