



**THE ATTORNEY GENERAL
OF TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN 11, TEXAS
December 30, 1947

Hon. George H. Sheppard
Comptroller of Public Accounts Opinion No. V-467
Austin, Texas

Re: The exemption of gas burned
in engines used for lifting
oil from the tax levied
under Art. 7047b, V.C.S.

Dear Sir:

Your opinion request dated December 1, 1947, is as follows:

"The question has arisen in this department as to whether gas burned in engines used for lifting oil is exempt from the tax levied under Article 7047b R.C.S.

"Sub-section (c) of Section 1 (1) of Article 7047b excludes gas used for lifting oil, unless sold for such purpose, in computing the tax on the business or occupation of producing gas within this State.

"It is argued that gas used for lease operations might well be within the exclusion provision of gas used for lifting oil. A pumping engine operating a pumping jack uses the gas burned to operate the engine for lifting oil. I shall, therefore, thank you to advise this department whether gas consumed in an engine used for lifting oil is taxable under Article 7047b.

"Reference is made to your Opinion O-4151-A."

The question presented is the use of gas as explained in your letter exempt from the occupation tax imposed by Article 7047b, by virtue of the exclusion contained in Subsection c of Section 1 of said Article. This subsection reads as follows:

"Gas used for lifting oil, unless sold for such purpose."

If the use as explained in your letter, namely as fuel for the operation of a pumping engine which lifts oil, is a use

comprehended by said Subsection of the statute, then no tax is due upon the production of said gas. We do not, however, accord such meaning to the phrase in the statute "used for lifting oil". This term is meant only to apply to gas injected into the earth for repressuring or lifting the oil of the ground, and has no reference to its use as fuel to generate mechanical power, such as pumping operations for lifting oil. This is the construction this Department has heretofore accorded to it. (See Opinion O-4151-A, a copy of which you have.) This, we think, was the manifest intention of the Legislature, and you are accordingly so advised.

SUMMARY

Exclusion from the gas production tax of gas used for lifting oil as provided in Sub-section c of Section 1 of Article 7047b, has reference only to gas injected into the ground for the purpose of pressure in lifting the oil, and not to gas used as fuel in a pumping engine that lifts oil.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/L. P. Lollar
L. P. Lollar
Assistant

APPROVED

s/Fagan Dickson
FIRST ASSISTANT
ATTORNEY GENERAL

LPL/lh/wc