



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

December 8, 1950

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-1129

Re: Application of the annual
shooting gallery tax to shoot-
ing galleries operated in
connection with carnivals.

Dear Mr. Calvert:

You request the opinion of this office upon the questions presented in your letter of October 27, 1950, as follows:

"Article 7047, Sub-division 35, as amended, levies an annual State Tax on Shooting Galleries.

"Article 7047, Sub-division 25(b), as amended, levies a quarterly tax on carnivals.

"A ruling by this Department has held that a shooting gallery operated in connection with a carnival is not covered by the carnival tax but owes the separate tax as a shooting gallery.

"Some of our field men, whose duty is to collect this tax, are of the opinion that a shooting gallery operating in connection with a carnival is covered by the carnival tax and does not owe the shooting gallery tax.

"In view of the conflicting opinions on this matter I would appreciate your advising me whether the quarterly tax paid by a carnival would cover a shooting gallery, or whether the shooting gallery would pay the separate tax.

"Would your answer be the same if the shooting gallery was owned by the carnival owner or if it was not owned by the carnival but operating with the carnival on a concession basis?"

Subdivision 35 of Article 7047, V.C.S., reads:

"From every person, firm, association of persons, or corporation, owning or operating a shooting gallery at which a fee is paid or demanded, there shall be collected an annual tax of Fifteen Dollars (\$15)."

Subdivision 25(b) of Article 7047 is as follows:

"From every carnival showing or exhibiting in this State, there shall be collected in advance a quarterly tax of Fifty Dollars (\$50); provided that from every carnival showing or exhibiting in only one county in this State in any calendar year there shall be collected in advance the quarterly tax of Fifty Dollars (\$50) until One Hundred Dollars (\$100) has been paid, whereupon no additional tax shall be collected during the same calendar year so long as such carnival has shown in only one county during such calendar year; it being the purpose hereof to require carnivals showing in only one county in any calendar year to pay not more than One Hundred Dollars (\$100) per year."

It is significant to note the language employed by the Legislature in these taxing statutes. By express language the shooting gallery tax is collected from every person, firm, association of persons, or corporation owning or operating a shooting gallery at which a fee is paid or demanded, and the carnival tax is collected from every carnival showing or exhibiting in this State.

The term "carnival" has an extended signification, and comprehends a variety of amusements. As defined by Webster's New International Dictionary (2nd Ed. 1938) it means "an amusement enterprise consisting of sideshows, vaudeville, games of chance, merry-go-rounds, etc.; also, an association for conducting such an enterprise." It may be conceded that its signification is broad enough to cover exhibitions of every kind and character from which amusement is derived, including a shooting gallery. A shooting gallery likewise has a well understood and distinct meaning in its common acceptation and is defined by the same edition of Webster's New International Dictionary as "a range, usually covered, with targets for practice with firearms." A carnival may be complete in all particulars under the foregoing definition without a shooting gallery. Conversely, a shooting gallery may, and often does, operate independently and without any connection whatsoever with a carnival.

In the enactment of the above statutory provisions pertaining to shooting galleries and carnivals, the Legislature was privileged to make this classification and render both subject to taxation. They both may be reasonably classified as places of popular amusement distinct and separate from each other, although a shooting gallery may be one of the attractions of a carnival.

The State occupation tax was first imposed on shooting galleries in 1897, and on carnivals in 1915. The Legislature last amended both Subdivision 25(b) and Subdivision 35 of Article 7047

in 1943, in the same amendatory act (Acts 48th Leg., 1943, ch. 372, p. 654). There is nothing in this act or any prior acts to indicate a legislative intent to exempt shooting galleries if operated in connection with a carnival. In the absence of such a legislative intent, either expressed or implied, we think the ruling of your Department is correct and both are subject to tax.

Our ruling would be the same whether the shooting gallery was owned by the carnival owner or by someone else, and whether it was operated by the carnival or on a concession basis.

SUMMARY

A shooting gallery operated in conjunction with a carnival, either through ownership by the carnival or on a concession basis, is subject to the tax imposed by Subdivision 35 of Article 7047, V.C.S.

Very truly yours,

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Attorney General

APPROVED:

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