



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS
May 12, 1959

WILL WILSON
ATTORNEY GENERAL

Honorable Ernest O. Thompson, Chairman
Railroad Commission of Texas
Austin, Texas

Opinion No. WW-625

Re: Applicability of Articles 6060
and 6050 to a gas pipeline
operation which crosses a pub-
lic road in one or more places

Dear General Thompson:

Your request for an opinion states the following:

"If a gas producer is required, in order to sell his gas, to construct approximately five miles of pipeline which crosses a public road in one or more places and for which eminent domain proceedings were not used in obtaining the right-of-way; and if the purchaser of said gas is a public utility paying the tax provided in Article 6060; is the producer liable for the tax provided in Article 6060?"

Article 6060, Vernon's Texas Civil Statutes, places a tax on one of the three types of gas utilities described in Article 6050. The classification of gas utilities set out in Article 6050 describes three general categories, being persons, companies, and corporations engaged in "one or more of the following kinds of business:

"1. Producing or obtaining, transporting, conveying, distributing or delivering natural gas: (a) for public use or service for compensation; (b) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (c) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (d) for sale or delivery of natural gas to the public for domestic or other use.

"2. Owning or operating or managing a pipeline for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

"3. Producing or purchasing natural gas or transporting or causing the same to be transported by pipelines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility."

Sections 4 and 4a of Article 6050 have no application to this case, being exemptions of natural gas used for agricultural purposes.

The gas utility tax provided in Article 6060, since the Act of 1931, applies only to gas utilities described in section 2 of Article 6050.

Questions have arisen in the application of the classification statute because of the fact that a business in one category may have some of the attributes of a business in another category. An opinion of Attorney General Gerald C. Mann, No. O-3524-A, held that the gas gathering system of Republic Natural Gas Company on its lease in the Saxet Field in Nueces County did not come under Section 2 of Article 6050 because Republic Natural Gas Company was engaged in the business of producing gas and the gathering lines, which were pipes running from its wells to a central point on its own lease, did not put it in the business of transportation of natural gas.

The opinion in Thompson vs United Gas Corporation, 190 S.W.2d 504,509, confirms the emphasis which the 1942 opinion of the Attorney General had placed upon making a determination of the kind of business in which the operator is engaged, although the Court did not mention the opinion of the Attorney General. The Court's opinion states that the classifications in Article 6050 "generally represent three businesses, namely, production, transportation, and distribution and sale of gas." United Gas Corporation was held in that case to be in the business of distribution and sale of gas as described in section 3 rather than in the business of transportation of gas as described in Section 2. Therefore, the corporation was not subject to the gas utilities tax in question.

The Court pointed out that gas utilities described in all three sections of Article 6050 would have the right of eminent domain. It is to be assumed also that a company in the business of distributing gas would likely have pipelines laid across public roads and highways as well as would companies in the business of transportation or transmission of gas. Such facts did not convert the distribution business of United Gas Corporation into a transportation or transmission business as a matter of law when, in the cited case, the trial court had found the business to be that of a gas distributing company.

It is our opinion that each such case involves a fact question: What type of business is the operator actually engaged in? Of course, an operator might well be engaged in more than one of the three types of business described in Article 6050.

The facts stated in your request for an opinion describe the subject as a gas producer who, in order to sell gas from his well, found it necessary to lay approximately five miles of 3" line to connect with a transmission line. The line crosses a public road in one or more places, but all of the pipeline right of way was obtained by purchase without resort to eminent domain proceedings.

It is our opinion that such facts do not establish that this gas producer is also in the business of transportation of gas as described in section 2 of Article 6050. While this is a fact question, we do not believe that the facts stated would be sufficient to support a determination by the Railroad Commission that this operator entered into the business of transportation or transmission of gas by the construction and use of such pipeline. Therefore, the producer would not be subject to the tax provided in Article 6060.

SUMMARY

Under the facts as stated, the utility tax of Article 6060 does not apply to gas pipe line owned by a gas producer crossing a public road when the producer, in order to sell gas from his well, constructed approximately five miles of 3" line to connect with transmission line, because producer did not thereby engage in the business of transportation of gas as described in Section 2 of Article 6050.

Very truly yours,

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By 
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JW/grb

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