



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

November 25, 1959

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin, Texas

Opinion No. WW-745

Re: Taxability of music coin-  
operated machines, or juke  
boxes, under Chp. 20, H.B.  
11, 3rd C.S., 56th Leg.

Dear Mr. Calvert:

You request the opinion of this office upon whether or not music coin-operated machines, commonly known as juke boxes, should be included within the definition of "phonographs" under Art. 20.01(g), H.B. 11, 3rd C.S., 56th Leg., and taxed as such.

Chapter 20 of H.B. 11 imposes miscellaneous excise taxes. Art. 20.01(g) defines "phonographs" as

"..... the apparatus or devices, either mechanical or electrical, commonly known and sold as phonographs, including record players, high-fidelity phonographs and stereophonic phonographs, and shall also include all sub-assemblies, devices or instruments designed for the reproduction of sound from tuning devices, recordings of tape, records of wire; devices designed for the amplification of sound received or reproduced by such devices; or one or more devices designed to be used in conjunction with other devices which when combined will constitute a device defined as a phonograph under this Chapter."

A tax of 3% upon the sale, distribution, or use of such phonographs is imposed by Art. 20.02.

It is our opinion that music coin-operated machines, or juke boxes, are not includible within this definition and hence not taxable under these articles.

Chapter 13 of this same tax Act imposes an occupation tax upon the "owner" or "operator" of coin-operated machines. "Music coin-operated machines" are specifically included within this group by Art. 13.01 (3), and that term is defined in Art. 13.01 (4) as

".....every coin-operated machine of any

kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend music."

Thus, phonographs are specifically included as a type of coin-operated machine to be taxed under Chapter 13, but no mention is made of coin-operated machines under the definition of "phonographs" in Chapter 20. The Legislature would presumably not have so precisely taxed such machines under one chapter, then have left such coverage under a later chapter to mere inference. This would seem particularly true inasmuch as the excise tax on phonographs (Chapter 20) is a new revenue measure with this tax bill, and hence should clearly cover those articles subject to it, whereas the tax on coin-operated machines was, in substance, carried over from previous tax statutes. See Art. 7047a-2 et seq., V.C.S. Moreover, the definition in Chapter 20 taxes only those machines "commonly known and sold as phonographs." Music coin-operated machines are commonly known and sold by that name or as "juke boxes," not phonographs.

Should the legislative intent behind the statute be deemed so unclear as to make construction necessary, Koy v. Schneider, 110 Tex. 369, 221 S.W. 880 (1920) resort to rules or canons of construction is appropriate. Johnson v. Ferguson, 55 S.W. 2d 153 (1932), error dism'd. One such canon is that taxing acts must be construed strictly against the taxing authority and liberally in favor of the taxpayer, where the question involved is whether or not a certain person or thing is included within its scope. Philtex Chemical Company v. Sheppard, 219 S.W. 2d 1010 (1949), err. ref. n.r.e.; Texas Unemployment Compensation Commission v. Bass, 137 Tex. 1, 151 S.W. 2d 567, aff'g. Carpenter v. Bass, 142 S.W. 2d 406; State v. San Patricio Canning Co., 17 S.W. 2d 160 (1929). Applying this rule we would again reach the conclusion that such music coin-operated machines, or juke boxes, are not "phonographs" under Art. 20.01(g), H.B. 11, and hence not subject to the excise tax imposed by that Chapter.

#### SUMMARY

Music coin-operated machines, commonly known as juke boxes, are not "phonographs" within the definition given in Art. 20.01(g), H.B.

11, 3rd C.S., 56th Leg., and hence not taxable as such.

Yours very truly,

WILL WILSON  
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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

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