



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

June 25, 1962

Honorable Mack Wallace
County Attorney
Henderson County Courthouse
Athens, Texas

Opinion No. WW-1361

Re: Whether members of the
National Guard are exempt
from the payment of road
tax under Articles 5840-
5844, V.C.S., inclusive.

Dear Mr. Wallace:

You have asked whether or not members of the National Guard are exempt from road tax under the provisions of Articles 5840 to 5844, V.C.S., inclusive.

Article 5840, V.C.S., reads as follows:

"All officers and enlisted men of the active militia of this State, who comply with their military duties as prescribed by this chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the Constitution for the support of public schools; exemption from the payment of any road or street tax, and from any road duty whatsoever under the laws of this State, and exemption from jury service or duty of every character and description." Acts 1905, p. 167.

Articles 5841 to 5844, V.C.S., inclusive, provide the method for the various categories of the militia to claim and receive their exemption. Art. 5842, V.C.S., reads as follows:

"To entitle any troop, battery, company, signal corps or band of the active militia of this State to exemption from the payment of road or street taxes, jury service or duty, and road duty as specified in Article 5840 of this chapter, the commanding officer of such organizations shall, between the first and thirty-first days of January of each year, file lists similar to that set forth in the preceding article, certified to him, one copy with the clerk of the district court of his county and one copy with the clerk of the county court of his county; and the names appearing on such lists shall thereafter be exempt from jury service or

duty of every character and description, from the performance of any road duty, and from the payment of any road or street tax in such county for the current year. County Clerks shall furnish information of those so exempt to the proper road overseers and to all others concerned." [Emphasis added.]

The reason Art. 5840, V.C.S., made it plain that there could be no exemption from \$1.00 of the poll tax, which goes to support the public school system, is because that much of the poll tax is prescribed by Sec. 3, Art. VII, Texas Constitution. What is this road tax mentioned in Articles 5840 to 5844, V.C.S., inclusive? These articles were enacted in 1905. You will note that each time there is a mention of exemption from road tax, it is coupled with exemption from road duty. Also, Art. 5842, V.C.S., directs the County Clerk to furnish information of those so exempt to the proper road overseers.

At the time Arts. 5840 to 5844, V.C.S., inclusive, were enacted in 1905, every able-bodied male citizen was required, upon being summoned by the road overseer of his precinct, to work not more than five days per year on the county road. Failure to come when so summoned was made a misdemeanor offense. Art. 6723, V.C.S. Certain persons were exempt, such as ministers, invalids, and members of volunteer fire companies. A person could be exempt by providing an able-bodied substitute, or by payment of a road tax of \$3.00. The county treasurer was required to furnish every road commissioner a list of all persons in their precinct who had paid the \$3.00 road tax, so that the Commissioner would know who was exempt from the call for road hands. Articles 6768 to 6770a-a, V.C.S. It is provided in Art. 6755, V.C.S., that in any county where a special tax for the maintenance of the public roads is levied and collected under Section 9, Art. VIII, Texas Constitution, the Commissioners are not required to compel citizens in their precincts to perform road duty, but that the roads would be maintained wholly by taxation.

All counties, so far as we know, now maintain their roads by taxation, which taxes are ad valorem, and are levied against property. The \$3.00 road tax which was levied under the old obsolete road laws was a voluntary tax which a male citizen could pay in order to be exempt from having to be a road hand and perform road duty at no compensation on the county roads for 5 days a year. These articles (5840-5844) are not giving any exemption from the ad valorem taxes levied against property for the benefit of the county Road and Bridge Fund, or the Special Road Taxes. There would be no way to exempt from ad valorem taxes any property solely on the ground that it was owned by a National

Guardman, unless such exemption was named in Section 2, Art. VIII, Texas Constitution.

Sec. 2, Art. VIII, Texas Constitution, names the property which may be exempt from taxation, and then concludes with the following phrase:

". . . and all laws exempting property from taxation other than the property above mentioned shall be null and void."

That these statutes pertaining to "road tax" and "road duty" are now obsolete was recognized as early as 1930 by the Court of Criminal Appeals of Texas in Johnson v. State, 31 S.W.2d, 1084 (Tex.Crim. 1930), even though the statutes are still found in the books. This was a case of driving while intoxicated, in which it was alleged that the defendant drove an automobile on a public highway while intoxicated. As one of his defenses, the defendant contended that the so-called highway upon which he drove his automobile was not a public road. The State proved that while the county had never formally dedicated such road as a public road, nevertheless, the county had recognized it as such, since the county had maintained it in years past under the old "road hand" method, and in more recent years the county had graded and worked the road. The Court left the inference that such laws calling for "road duty" by "road hands" are now obsolete by referring to such laws as "old," when it said at page 1086:

". . . The evidence shows conclusively that the road in question had been used by the general public as a public road for more than thirty years. Road hands under the old road laws had worked it under the supervision of road overseers; and in recent years the commissioners' court or road supervisors, had graded and worked the road. . . ."

Therefore, as early as 1930 it was recognized that county roads are no longer maintained by the male citizen, road-hand method, but are worked and maintained by county employees who are paid a salary from out of the Road and Bridge Fund. We hold, therefore, that the road tax from which the militia is exempt under Articles 5840-5844, V.C.S., inclusive, is the \$3.00 tax which male citizens formerly paid in order to become exempt from having to perform without compensation five days road duty per year on the county roads. Those articles are still valid to the extent that they exempt the militia from having to perform 5 days road duty on the county roads, or pay the \$3.00 road tax in lieu thereof, as to those counties, if any, which still maintain their

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roads by the "road duty" method.

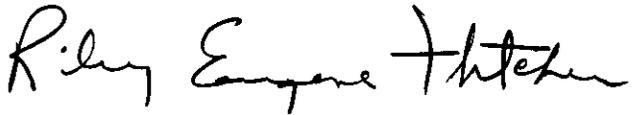
S U M M A R Y

The "road tax" from which the militia is exempt under Arts. 5840-5844, V.C.S., inclusive, is the \$3.00 road tax which a male citizen may pay under the provisions of Arts. 6768-6770a-2, V.C.S., inclusive, in lieu of performing 5 days "road duty" per year on the county roads, as provided in Art. 6723, V.C.S.

The exemption from "road tax" in Arts. 5840-5844, V.C.S., inclusive, does not exempt property belonging to National Guardsmen from ad valorem taxes levied for the maintenance of roads.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Riley Eugene Fletcher
Assistant

REF:jp:ms

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
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