



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL**  
ATTORNEY GENERAL

June 19, 1975

The Honorable Kenneth W. Cook  
Administrator  
Texas Alcoholic Beverage Commission  
P. O. Box 13127, Capitol Station  
Austin, Texas 78711

Opinion No. H-630

Re: Whether a private club  
license fee can be paid under  
protest to the Alcoholic Beverage  
Commission.

Dear Mr. Cook:

You have requested our opinion concerning whether the provisions of article 1.05, Taxation-General, and article 7057b, V. T. C. S., apply to the license fee payable by private clubs as provided by article 666-15e, section 6, Vernon's Texas Penal Auxiliary Laws.

Article 1.05, Taxation-General, and article 7057b provide a procedure by which "any person, firm, or corporation who may be required to pay . . . license . . . tax or fee" may pay such under protest and bring suit to establish the true liability, if any.

Article 666-15e, section 6, provides that the Private Club Registration Permit fee shall be paid "as provided in Section 15b." Article 666-15b, Penal Auxiliary Laws, provides for advance payment of the fee and states:

No refund of permit [fees] shall for any reason be made by the Board, except when the permittee is prevented from continuing in business by reason of the result of a local option election, or upon rejection of an application for a permit by the Board or Administrator.

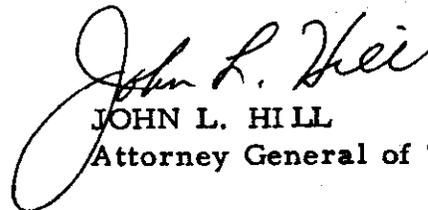
In our view, this provision was intended to prohibit the return of a properly determined fee except as provided. We do not believe the Legislature intended to remove the permit fee from the operation of the payment in protest

statutes. While article 666-15e (7a) makes no reference to these statutes and provides for an appeal from a revocation of a permit, the procedures of the payment in protest statutes remain available. Berry v. McDonald, 123 S. W. 2d 388 (Tex. Civ. App. -- San Antonio 1938, no writ). The language of article 1.05, Taxation-General, and article 7057b is absolute; they provide that any person may utilize their procedures. While some statutes provide similar procedures to be utilized instead of those therein provided, Attorney General Opinion C-29 (1963), article 666-15e does not. Accordingly, it is our opinion that the procedures provided by article 1.05, Taxation-General, and article 7057b are available to a person paying a Private Club Registration Permit fee.

SUMMARY

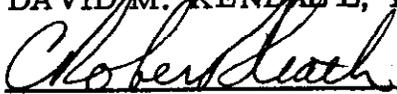
Article 1.05, Taxation-General, and article 7057b, V. T. C. S., are applicable to the Private Club Registration Permit as provided by article 666-15e, section 6, Vernon's Penal Auxiliary Laws.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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