



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Tom A. Craven  
County Auditor  
McLennan County  
Waco, Texas

Dear Sir:

Opinion No. O-4496

Re: Whether a certain instrument, pledging as security, among other things, a feed mill and a dairy electric refrigerator, is exempt from the taxable provisions of Senate Bill 96, Acts, 47th Legislature, Regular Session.

We have received your request for an opinion from this department. We quote from your request;

"Mr. Floyd Mitchell, our County Clerk, has requested that I secure an opinion from your department on the following question:

"A chattel mortgage has been presented to Mr. Mitchell for filing. This mortgage is given to secure an indebtedness of \$9,150.00, and to further secure two years rent on a farm at an annual rental of \$4,500.00, making a total indebtedness of \$13,650.00. This mortgage pledges farming implements, sheep, yearlings, horses and about 90 head of dairy cattle to secure this entire indebtedness and also included in this mortgage are the following two items of personal property:

- "1 International feed mill
- 1 Dairy electric refrigerator - International

"All of the property described in this mortgage being located on a farm of about 1500 acres, lying in McLennan and Falls Counties.

"Mr. Mitchell wants to know if the inclusion of the two items set out above would prevent this mortgage from coming under the exceptions to the statute, excepting farm products and farming implements from the payment of the State Note Stamp Tax."

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The 47th Legislature, Regular Session, enacted Senate Bill 97, which was an amendatory Act of Article 7247e of Vernon's Civil Statutes of Texas which provides that instruments securing certain notes and obligations are subject to a tax for the privilege of recording same in the deed records of the county in which such instrument is presented. The exceptions from the taxable provisions of the Act are stated as follows:

"\* \* \* nor shall the provisions of this section apply to obligations or instruments secured by liens on crops and farm or agricultural products, or to livestock or farm implements, or on abstracts of judgment."

We refer you to the definition of "farming tools and utensils" in our Opinion No. 0-3559, a copy of which is enclosed. We think the definition therein given is applicable and proper here. We think, under the facts submitted by you, that it is evident that the mortgagee is engaging, to some extent, in milking cows as a part of the normal operation of the farm and that the feed mill and dairy electric feeder would be implements used and needed by the farmer in conducting his own farming operation. Since such are "farming implements," in our opinion, then they come clearly within the exception of the taxable provisions of Senate Bill 97 and are therefore not taxable under said Act.

Your question is specifically answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAR. 27, 1942  
(s) Geever Sellers  
First Assistant Attorney  
General

By (s) Harold McCracken  
Assistant

EM:ej  
Encl.