



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 24, 1961

Honorable Charles L. Ballman, Chairman
Committee of Revenue & Taxation
House of Representatives
Austin, Texas

Opinion No. WW-1025

Re: What articles of commerce
are included within the
phrase "and family supplies
for home and farm use" as
used in Sec. 19 of Art.
VIII of the Constitution.

Dear Mr. Ballman:

You have requested an opinion from this department on the interpretation of Sec. 19 of Art. 8 of the Constitution of the State of Texas.

Sec. 19 of Art. 8 reads as follows:

"Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the Legislature."

You state that you are particularly concerned with the phrase "and family supplies for home and farm use". Family supplies for home and farm use are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the Legislature. This clause is somewhat vague and indefinite.

The above quoted section was added to the Constitution in 1879, and we have been unable to find any court decision interpreting the meaning of the phrase, "family supplies for home and farm use".

In construing this section it is necessary to read the complete paragraph and view the overall picture rather than to try to construe one clause by itself.

It is our opinion that family supplies for home and farm use means commodities in the home and on the farm for day-to-day use after they are in the hands of the consumer and not before. These commodities are not exempt from taxation before their acquisition by the farmer or dwellers of a home.

Commodities while in the hands of the merchant or distributor would not be family supplies as contemplated by Sec. 19. These commodities would be subject to taxation until after they are acquired by farmers or home dwellers, at which time they would cease to be taxable unless otherwise directed by two-thirds of the members of both houses.

You have asked to be advised as to what articles of commerce are included in this exemption clause of "family supplies for home and farm use".

It would be almost impossible to enumerate all of the commodities or articles of commerce that could be classified under this clause. There are cases in which certain articles might be classified as supplies for some families and would not be supplies for another family.

Family supplies for home and farm use as commonly used in everyday language means consumable articles reasonably necessary for day-to-day use in operating or maintaining a farm or home.

"When applied to material objects the terms 'supply' and 'supplies,' in their more general signification, embrace anything required or furnished to meet a need; in their restricted sense the terms may be employed to designate any substance that is consumed with its use. Where articles are totally used up in the usual and ordinary performance of a contract, so that nothing remains in excess of normal salvage, they lose their identity as tools, appliances, implements, and machinery and are included within the broader definition of 'supplies'." Minnehoma Oil Co. v. Ross, et al, 292 P. 9, (Okla.Sup.Ct., 1926). A. L. Young Machinery Co. v. Cupps, et al, 297 P. 538, (Cal.Sup.Ct., 1931).

Journals contained in our State Archives show that the Legislative Committee on constitutional amendments of the 16th Legislature, 1879, submitted several resolutions and substitutes therefor for amending Art. 8 of the Texas Constitution to exempt farm produce while in the hands of the producer and family supplies for home and farm use.

The various resolutions and substitutes showed the intention of the Legislature at that time to exempt produce of the soil and supplies or provisions necessary for the family consumption.

One proposed resolution read "provisions and forage on hand for home consumption". This proposal went on to exempt one wagon, two horses, one yoke of oxen, one cow and calf and all farming utensils. This shows that it was not meant to include as supplies such things as wagons, horses, oxen, cows or farm utensils.

A resolution proposed exempting farm produce while in the hands of the producer except livestock. Another resolution proposed exempting all family supplies for home use. A third resolution proposed exempting all farm and garden produce of the soil in the hands of the producer necessary for family consumption during the year the assessment is made. Still, another resolution proposed exempting farm produce of the soil in the hands of the producer and necessary for home consumption and all family supplies for family use.

At the Democratic Convention in Texas in 1878, a resolution was passed providing that all provisions on hand for home consumption should be exempt from taxation.

This all tends to show that at the time this constitutional amendment was adopted it was the intention of the people to exempt from all taxation commodities, supplies, or provisions on hand for home consumption.

In a Texas decision, the Court had under consideration a chattel mortgage on a saw mill which included; ". . . all supplies I have on hand or may have at the time of the foreclosure of this lien. . . ." The Court, in speaking of supplies, said:

" . . . An ordinary, non-technical word should be taken in its most usual and ordinary sense as applied to the subject-matter to which it relates, unless there by something in the context which shows that it was intended that a different meaning should be attached. 'Supplies', in the plural, has a fairly well defined meaning; that is to say, such stores of food, etc., as are kept on hand for daily use. . . . The evidence shows there was a commissary attached to the mill, and we think the word was intended to include the stores therein kept, as well as all forage for livestock and other farm produce and merchandise, kept ordinarily on hand for operating the mill. . . ." Conner, et al v. Littlefield, et al., 79 Tex. 76, 15 S.W. 217 (1890)

S U M M A R Y

"Family supplies for home and farm use" as used in Sec. 19 of Art. 8 of the

Texas Constitution means consumable articles reasonably necessary for day-to-day use in operating or maintaining a farm or home. Until otherwise directed by a two-thirds vote of all members elect to both houses of the Legislature, such supplies are exempt from all taxation when they are in the hands or possession of farmers or home dwellers and not before.

Yours very truly,

WILL WILSON
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By:


J. H. Broadhurst
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JHB:jp

APPROVED

OPINION COMMITTEE:
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REVIEWED FOR THE ATTORNEY GENERAL

By: Morgan Nesbitt