



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

WAGGONER GARR
ATTORNEY GENERAL

November 9, 1965

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

Opinion No. C-539

Re: Whether peace officers,
under the laws of Texas,
have the authority to de-
tain or seize unstamped
cigarettes, if in a pro-
hibited quantity and in
the possession of an un-
authorized person.

Dear Mr. Calvert:

You recently requested an opinion from this office
on the following question:

"Since the recent increase by the
Legislature in the cigarette tax, we
are experiencing an increase in the
influx of unstamped cigarettes into
the State of Texas. This department
requests your opinion as to whether or
not peace officers under the laws of
this State have the authority to de-
tain or seize unstamped cigarettes if
in a prohibited quantity and in the
possession of an unauthorized person."

Article 7.37, Taxation-General, Vernon's Civil Stat-
utes, makes the transportation and the possession for use,
sale, or exchange of unstamped cigarettes in quantities of more
than 40 cigarettes a felony.

Article 7.30, Taxation-General, Vernon's Civil Stat-
utes, provides for the seizure by the Comptroller of cigarettes
which are transported in violation of the law or found in the
possession, custody, or control of any person in violation of
the cigarette tax law and Article 7.31 thereof provides for the
disposition of the cigarettes when seized.

Article 7.30, in addition to providing for the seizure
of unstamped cigarettes, provides:

". . . All such cigarettes, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable." (Emphasis Added)

The above provision recognizes that the authority to seize unstamped cigarettes is not vested exclusively in the Comptroller and that sheriffs and other officers may make such seizures. An officer making a legal arrest is authorized to search the premises and seize the things used in carrying out a criminal enterprise. Stokes v. State, 35 S.W.2d 727 (Tex. Crim. 1931). Therefore, under the laws of the State of Texas any peace officer may seize unstamped cigarettes when there is a legal right to arrest the person found in possession of such cigarettes, and a lawful search has disclosed the presence of unstamped cigarettes.

Article 34 of Vernon's Code of Criminal Procedure provides that the sheriff and his deputies, constable, the marshal or policemen of an incorporated town or city, the officers, non-commissioned officers and privates of the State ranger force, and any private person specially appointed to execute criminal process are "peace officers."

Article 2.12 of Senate Bill 107, 59th Legislature, to take effect and be in force on January 1, 1966, provides:

"The following are peace officers: The sheriff and his deputies, constable, marshal or policemen of an incorporated town or city, the officers, non-commissioned officers and privates of the State Ranger Force and Department of Public Safety, law enforcement agents of the Texas Liquor Control Board, and any private persons specially appointed to execute criminal process."

Article 666-7b of Vernon's Penal Code provides that commissioned inspectors and representatives of the Texas Liquor Control Board shall have all the powers of a peace officer co-extensive with the boundaries of the State.

In Cervantes v. United States, 263 F.2d 800, (C.C.A. 9th, 1959), The Court stated:

"An authorized federal border official may, upon unsupported suspicion stop and search persons and their vehicles entering this country. 19 U.S.C.A. § 482. Carroll v. United States, 267 U.S. 132 (1925). . ."

It is, therefore, the opinion of this office where a lawful search is made by a federal border official and he discovers unstamped cigarettes in quantities of more than 40 cigarettes that are in the possession of an unauthorized person and the federal border official reports the presence of such cigarettes to a peace officer of the State of Texas, present at the border inspection station, then the peace officer may seize the cigarettes in his official capacity as a peace officer of the State of Texas.

A peace officer who makes a legal arrest, within the boundaries of the State, is authorized to search and seize unstamped cigarettes, if in a prohibited quantity and in the possession of an unauthorized person. Stokes v. State, supra.

S U M M A R Y

Under the laws of the State of Texas any peace officer may seize unstamped cigarettes where there is a legal right to arrest the person found in possession of the cigarettes, and a legal search has disclosed the presence of unstamped cigarettes in a prohibited quantity in the possession of an unauthorized person.

Very truly yours,

WAGGONER CARR
Attorney General of Texas


DOUGLAS H. CHILTON
Assistant Attorney General

DHC/at

APPROVED:

OPINION COMMITTEE:

Honorable Robert S. Calvert, Page 4, C-539

W. V. Geppert, Chairman
Sam Kelley
Milton Richardson
Tom Routt
Ivan Williams

APPROVED FOR THE ATTORNEY GENERAL
BY: T. B. Wright