



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

February 26, 1971

Mr. R. L. Coffman  
Administrator  
Texas Employment Commission  
Austin, Texas

Opinion No. M-797

Re: Whether amendments to the Texas Unemployment Compensation Act which would permit two classes of newly covered employers to pay taxes at a lower rate than other newly covered employers, would violate Article VIII, Section 1 of the Texas Constitution.

Dear Mr. Coffman:

In your request for the opinion of this office on the above question, you state that Public Law 91-373, Employment Security Amendments of 1970, passed by Congress on August 10, 1970, requires that coverage under the terms of the Texas Unemployment Compensation Act (Article 5221b, Vernon's Civil Statutes) be extended by January 1, 1972, to include certain classes of employers which were previously exempt from coverage. Two of the classes of employers to which coverage must be extended are employers of one to three employees and nonprofit organizations. The federal act also will permit, but not require, the Texas Act to be amended to allow these two classes of employers a reduced tax rate of not less than 1% rather than the tax rate of 2.7% which will be required of other new employers. The question has therefore arisen whether amendments to the Texas Act allowing these two classes of employers a lower tax rate than other new employers would violate Article VIII, Section 1, of the Texas Constitution which provides, in relevant part, "Taxation shall be equal and uniform. . . ."

Since the adoption of this constitutional provision, it has been recognized that a literal interpretation and application of the requirement for equal and uniform taxation would not be equitable, since all taxpayers are not in equal

circumstances. Texas courts therefore formulated a doctrine of 'reasonable classification' which provides that, notwithstanding this constitutional mandate, the Legislature may classify subjects of tax and regulatory legislation on the basis of real and substantial differences, and thus discriminate in the burdens placed on these various classes. 12 Tex.Jur.2d 457-462, Constitutional Law, Secs. 110-114. Accordingly, this section of the Constitution would not prohibit the Legislature from enacting a tax that is unequal on its face, provided that the legislation creates reasonable classifications of subject matter and provided that the tax is applied uniformly to each particular class.

The Texas Supreme Court previously had occasion to rule on the constitutional validity of the classifications established by the original Texas Unemployment Compensation Act. In the original Act, which became effective in 1936, coverage was extended to employers with eight or more employees. Nonprofit organizations were exempt. In 1955, the number of employees required for coverage was lowered to four or more. In Friedman vs. American Surety Co. of New York, 137 T.149, 151 S.W.2d 570 (1941), the Supreme Court, in answering certified questions from the Court of Civil Appeals, held that the Act did not violate any provision of the Texas Constitution. Although the Court was not specifically considering Section 1 of Article VIII of the Constitution, it did briefly advert to the doctrine of reasonable classification in its opinion when it stated:

"Our Constitution does not forbid legislative classification of subjects and persons for the purpose of regulatory legislation, but it does require that the classification be not arbitrary or unreasonable. Classification must be based on a real and substantial difference, having relation to the subject of particular enactment. If there is a reasonable ground for the classification, and the law operates equally on all within the same class, it will be held valid. 9 Tex.Jur. p. 558, Sec. 120. We will not extend this opinion by attempting to analyze or discuss the

above exceptions. It is sufficient to say that, measured by the above rules, the classifications and exceptions made by this Act are not unreasonable or arbitrary. Stated in another way, we think that such classifications are based upon real and substantial differences having relation to the subject matter of the legislation." (151 S.W.2d 577)

Since, at that time, the Act taxed employers of eight or more employees and did not tax employers of seven or less employees or nonprofit organizations, the Court, in effect, held that these classifications by the Legislature were reasonable and not in violation of Section 1 of Article VIII of the Constitution. In our opinion the same reasoning would apply to the 1955 amendment extending coverage to employers of four or more employees.

Since the Legislature is constitutionally authorized to make this distinction between classes of employers in determining whether a tax should be imposed, we hold it may further make a distinction in determining that the tax shall be assessed at varying rates between such classes. In other words, if it is constitutional to tax some classes of employers and not to tax other classes, as is presently done, it would also be constitutional to tax the former at one rate and to tax the latter at a lesser rate.

For these reasons, it is our opinion that amendments to the Texas Unemployment Compensation Act allowing these two classes of new employers a lower tax rate than other new employers, would not be in violation of Section 1 of Article VIII of the Texas Constitution.

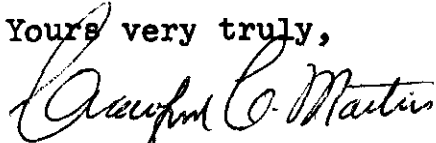
#### S U M M A R Y

Amendments to the Texas Unemployment Compensation Act, Article 5221b, V.C.S., which would permit employers of one to

Mr. R. L. Coffman, page 4, (M-797)

three employees and nonprofit organizations to pay taxes at a lower rate than other newly covered employers, would not violate Article VIII, Section 1, of the Texas Constitution.

Yours very truly,



CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Stephen W. Hollahan  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Kerns Taylor, Chairman  
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Wm. J. Craig  
Malcolm Smith

MEADE F. GRIFFIN  
Staff Legal Assistant

ALFRED WALKER  
Executive Assistant

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First Assistant