



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 25, 1955

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

Opinion No. MS-204

Re: Application of Chain Store Tax
Law, Article 1111d, V.P.C., to
funeral homes under certain
circumstances.

Dear Mr. Calvert:

In your opinion request of April 1, 1955, you ask us to answer two questions which for convenience we shall designate (1) and (2). We quote from your letter:

"(1) A funeral home does not sell caskets, flowers, or merchandise from a 'store' as used in the usual sense of the word. A funeral service is offered and as part of the funeral service, a casket is used, flowers may be furnished from an outside source, and other articles such as underclothing, hose, shrouds, dresses, and other clothing are available, along with any other items necessary to complete the service. The clothing is kept in stock and when furnished with the service it is billed separately, along with the other service charges, on an itemized invoice. Would the place in question be considered a 'store' and be liable for payment of store tax?"

"(2) A funeral home makes no sales of any kind of goods, wares or merchandise other than the casket which determines the cost of the funeral service. Clothing is not kept in stock and is not included in the price of the funeral except in cases of selection by a representative outside the funeral home itself. When no other sales of goods, wares or merchandise are made in connection with service rendered for a funeral, would the sale of the casket establish liability for payment of the store tax by the funeral home?"

The answer to both your questions is in the negative.

Section 7, Article 1111d, Vernon's Penal Code, commonly designated the Chain Store Statute, contains a definition of a store or mercantile establishment subject to the tax. This definition is as follows:

"Sec. 7. The term 'store' as used in this Act shall be construed to mean and include any store or stores or any mercantile establishment or establishments not specifically exempted within this Act which are owned, operated, maintained, or controlled by the same person, agent, receiver, trustee, firm, corporation, copartnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, at retail or wholesale."

It is significant to note that this definition presupposes that the term store or mercantile establishment is commonly understood. The definition of a store is merely amplified by adding "in which goods, wares or merchandise of any kind are sold at retail or wholesale."

We do not think that it was the intention of the Legislature to classify as stores, business or service establishments such as mortuaries, funeral homes and undertaking establishments for they are not commonly or generally understood by the public to be stores, although some articles of merchandise commonly sold by stores may be used or sold incidental to the service rendered by a funeral home, undertaker or mortuary.

Another, and perhaps more significant, reason why the Legislature did not intend to classify such establishments as stores and subject them to the chain store tax is that they are specially dealt with and regulated by other statutory provisions. (Arts. 4576-4582a, V.C.S.) By these statutory provisions the Legislature has set up a complete and comprehensive plan of licensing and regulating the science of embalming and funeral directing. By these regulatory provisions the Legislature designated embalming and funeral directing a science and has provided for the examination and licensing of embalmers and funeral directors. Section 7 defines a funeral director and is in this language:

"Sec. 7. A 'Funeral Director' is a person engaged in or conducting or holding himself out as engaged in or conducting the business of, (a) preparing, other than by embalming, for the burial or disposal and directing and supervising the burial or disposal of dead human bodies, (b) providing for or maintaining a place for the preparation, for the disposition or for the care of

dead human bodies, or (c) who shall, in connection with his name or business, use the words 'Funeral Director,' 'Undertaker,' 'Mortician,' or any other title implying that he is engaged in the business here described."

We think under the explicit terms of this definition the furnishing of the items enumerated in your question (1) would be part of preparing for the burial or disposal of dead human bodies. A casket and appropriate clothing are essential parts of the preparation and of the service rendered. The fact that the undertaker or funeral director has available and furnishes these essentials and makes a charge therefor does not constitute the funeral home, undertaking establishment or mortuary in any sense a store. The furnishing of the articles necessary to the preparation for burial is incidental and part of the service rendered. We do not think it makes any difference that only one of the necessary items, namely a casket, is furnished or sold by the funeral home for it still remains that it is a part of the necessary items to be furnished in connection with the preparation for burial. You are therefore advised that a funeral home, undertaking establishment or mortuary under the facts submitted under questions (1) and (2) above are not stores under the provisions of the chain store statute and hence not taxable as such.

Yours very truly,

APPROVED:

Enos T. Jones
Reviewer

J. A. Amis, Jr.
Reviewer

Robert S. Trotti
First Assistant

JOHN BEN SHEPPERD
Attorney General

By


L. P. Lollar
Assistant