

Opinion No. 34-764

May 23, 1934

BY: E. K. NEUMANN, Attorney General

TO: Hon. Clinton P. Anderson, Emergency School Tax Department, Santa Fe, New Mexico.

{*133} Your letter of May 18, 1934 refers to Section 202 of the Emergency School Tax Act of 1934, wherein it is provided that none of the taxes levied by such act shall apply to sales made to the State of New Mexico or any of its departments or agencies, and you ask: "What are the recognized agencies and departments of the State of New Mexico?"

Of course, sales, made to the State are exempt and so are sales made to its various departments, such as the Highway Department, the department of the Governor, Treasurer and the like, where such sales are paid out of funds from the State Treasury or from other public funds in the hands of Boards, Commissions, etc., where constitutional or legislative permission is given for their spending.

Our courts have held that State Institutions are agencies of the state, so that all state institutions, including educational institutions are to be considered agencies of the state, even if they are not departments thereof, and sales made to them are exempt from taxation under the act in question.

As to the Middle Rio Grande Conservancy District, and like political subdivisions or municipal corporations, counties, municipalities and the various school districts being departments or agencies of the state, a more difficult question is presented.

We will first discuss the proposition of municipal corporations as agencies or departments of the state. In 43 Corpus Juris, under the subject {*134} of "Municipal Corporations" we find an exhaustive discussion of this proposition.

"A municipal corporation, being recognized as an appropriate instrumentality for the administration of general laws of the state within its boundaries and appointed and empowered for that purpose, thereby becomes an agent of the state for local administration and enforcement of its sovereign power. * * * In their public and governmental aspects municipal corporations are referred to as * * * departments of the state * * * public agencies. * * *"

"The government exercised by a municipal corporation is exercised as an agency of the whole public and for the people of the state."

See the following cases:

Kinney vs. Astoria, 217 P. 840.

Hillsboro vs. Pub. Ser. Com., 192 P. 390.

State vs. Port of New Orleans, 108 So. 770.

The same discussion, I find upon research, is equally applicable to a county. See 15 C.J. 388, et seq., and the Chapter entitled "Counties," and the following cases:

Mackenzie vs. Douglas County, 159 P. 625 (Ore.)

District vs. Sutter County Sup. Ct., 154 P. 845 (Cal.).

Board vs. Bucktegge, 158 P. 837 (Ariz.).

In 56 C.J. 193, under the title of "Schools and School Districts," we find the following statement, supported by ample authority:

"A school district, or a district board of education or of school trustees, or other local school organizations, is a subordinate agency, subdivision, or instrumentality of the state, performing the duties of the state in the conduct and maintenance of public schools."

It would seem therefore that, under the foregoing, municipal corporations, counties and school districts are such departments or agencies of the State of New Mexico as are mentioned in said Section 202, and that sales to same are exempt from the tax imposed by the Emergency School Tax Act of 1934.

By analogy, conservancy districts and other like districts, declared to be municipal corporations or political subdivisions of the state by the acts creating same or providing for their creation, are likewise exempt by said act, as departments or agencies of the state. Under such acts, they become purely creatures of statute with power to perform local duties for the state. They have only such powers as are specifically granted, or reasonably implied, from the statutes by which they are governed and restrained in the exercise of the powers and duties granted them.

This opinion is contrary to my oral statement heretofore made, which statement, of course, was only my snap judgment to be revised, if necessary, after research, and consequently supercedes all former opinions upon this subject.