

Opinion No. 43-4229

February 11, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Don R. Casados, Corporation Commissioner, Santa Fe, New Mexico

We have your request for an opinion concerning whether or not a certain bus operated by the Post Exchange of the Lordsburg Internment Camp is subject to certain laws of the State of New Mexico which regulate the carrying of persons for hire.

I call your attention to the fact that this office gave an opinion to Mr. Alfonso C. de Baca of the Motor Vehicle Division of the Bureau of Revenue on November 16, 1942, relative to the identical situation. This is Opinion No. 4185. We held that we could not require this bus to buy a state license plate, since to do so would be laying a tax on a Federal instrumentality, and would be taxing a Federal function. This opinion is fully determinative of your question, and we therefore hold that the State Corporation Commission has no power to regulate, or in any manner interfere with the operation of the above mentioned bus.

Information which we have received definitely indicates that the bus, while charging certain people for riding, does not hold itself out as a common carrier, but, in fact, limits the people who can ride on such bus for a charge of 10c to soldiers and civilian employees of the Internment Camp and the members of their families. M. P.s are allowed to ride free.

We further find that this bus was purchased by the Post Exchange from the Fulwiler Motor Company of El Paso, Texas, for an amount of \$ 4,872.87. First Lieutenant Capp, Captain A. Warren and Captain Jessie Saffold affixed their signatures to a time sales contract under the name of the U.S. Camp Exchange, Lordsburg Internment Camp for the balance of \$ 2,872.87.

Under the Army regulations governing post exchanges, it seemed absolutely clear to this office that the above mentioned officers were authorized to sign such contract, and that it resulted in the Army acquiring title subject to such contract of the bus involved.

We did, however, submit this matter to the Secretary of War, the Honorable Henry L. Stimson, who referred the matter to the Adjutant General's office of the War Department. Brigadier General H. B. Lewis, the Adjutant General, gave an opinion wherein he held that such bus was, in fact, owned and operated by the Army Exchange as a proper legal entity to engage in such activity, and further held that such operation was strictly the performance of an Army function by a Federal instrumentality, and in all respects made an identical ruling to the one previously given by this office in Opinion No. 4185.

For further citations on this question, see *Standard Oil Company vs. Johnson*, 316 U.S. 481, 62 Supreme Court 1168, 86 L. Ed. 1611. The question of post exchanges was in this case fully discussed by our United States Supreme Court. The Court stated:

"We conclude that post exchanges, as now operated, are arms of the Government, deemed by it essential for the performance of Governmental functions. They are integral parts of the War Department, share in fulfilling the duties entrusted to it, and partake of whatever immunities it **may have** under the Constitution and Federal Statutes."

The doctrine of the immunity from State interference of Federal functions was first established in an opinion of Chief Justice Marshall in 1819 in the case of *McCulloch vs. State of Maryland*, 4 Wheaton 316, 4 L. Ed. 579; also see *United States vs. McQuery*, 37 Federal Supplement 972, wherein it was held that a post exchange was a Federal instrumentality, and therefore, provisions of a State statute were not applicable.

The Court stated, in the case of *United States vs. McQuery*, 21 Federal Supplement 784, the applicable and well established rule of law as follows:

"Instrumentalities, means, and operations employed by the United States in the exercise of its Governmental powers are exempt from tax, regulation, or interference by the states."

Also see *Metcalf and Eddy vs. Mitchell* 269, U.S. 514, 46 Supreme Court 172, 70 L. Ed. 384; *South Carolina vs. United States*, 199 U.S. 437, 26 Supreme Court 110, 50 L. Ed. 261; *Commodity Credit Corporation vs. County of Oklahoma*, 36 Federal Supplement 694.

Enclosed see copy of Opinion No. 4185, which can be considered a part of this opinion.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General