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61-107-L (A)

July 31, 1961

Honorable L. Alton Riggs
-CHAIRMAN -
Judiciary Committee
House of Representatives
Capitol Bldg. Phoenix, Arizona

Dear Mr. Riggs:

Your opinion request was on the following question:

"Does Senate amendment to S. B. 3 come within the scope of the Governor's call particularly as pertaining to paragraphs 4 and 5 on page 3, dealing with increase in gross sales taxes of spiritous liquors on the wholesaler's level."

Since the opinion is in two parts, I have asked Mr. Haggerty to answer the question specifically involving proposed sections 4-209 (D) 4 and 5, which deals with the fees to the wholesalers.

We are unable to give a categorically yes or no as to whether or not this section is within the Governor's call, but it is our considered opinion that the amendment would be sustained in a judicial proceeding as being within the scope of the Governor's call, which is, of course, an element of its constitutionality in view of the following.

Our court has already expressed its general philosophy in legislation in giving the most complete presumption of constitutionality and has said that the Legislature may enact matters freely within the call. Fees are germane to the question of issuance of liquor licenses. Every presumption is made in favor of the regulating of such legislation. Board of Regents of University of Arizona vs. Sullivan (1935) 45 Ariz. 245, 42 P. 2d 619.

Governor
CLARK KENNEDY
1. Counsel
PHIL HAGGERTY
2. Counsel
C. L. HUERTA

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ARIZONA ATTORNEY GENERAL

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It is my considered opinion that the matters in proposed S.B. 3 would be sustained as fees and not be considered as a tax. In Stewart vs. Verde River Irr. & Power District, 49 Ariz. 531, 68 P. 2d. 329, our court considered legislation which was quite similar to the proposed amendment in determining whether or not monies paid by an irrigation district to the Water Commissioner computed on a standard of acreage served and horse-power developed as being a fee, not a tax, and indicated the test as follows:

1. Is it a voluntary payment in exchange for a governmental service as contrasted with a mandate imposed by the government for general revenue.
2. Is the amount of the fee exacted reasonably related to the value of the service rendered.

The court said:

"The real test is not the manner in which the fees are handled, but the ultimate purpose of the Legislature, cost or surplus revenue."

"The fee is based upon what the water commissioner should, and not what he actually does do or fails to do in the particular case."

Taking these two tests, the amendment clearing falls within them. The payment is voluntary. It requires no citation of authority to state that a person who desires to enter the liquor business and subject himself to the police power of the state and assume the burdens connected with this business does so voluntarily.

The amendment does not constitute a general mandate imposed upon the public or any particular class of the public. The Commissioner is charged in the statute with the broad duty under Sec. 4-112, Arizona Revised Statutes, of enforcing the liquor code and requires extensive investigation of the business and persons therein, requires a hearing and determination of complaints and requires the Commissioner to investigate, make discretionary determination and, in addition to the liquor problem, to further assist in the enforcement of laws relating to narcotic drugs. Mr. Haggerty, in his letter as pointed out that the cost of the department was substantial and may not yet even be met by this standard of fees.

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I, therefore, believe that the service rendered to the individual is not out of proportion to the amount being charged. Because of the scope of the question, we make no determination or representation as to any possible claim of unreasonable discrimination between classes within the class of persons in the general scope of the statute since the scale of fees varies from an on-sale retailer's license to sell wine and beer under Sec. 4-209(B)7, and to hotel-motel license or restaurant license under Sec. 4-209(B) 15 and 16, from \$100 for the first group to \$1,000 for the second.

Again, we think this should be resolved under the pre-sumption of validity and we, therefore, render our considered opinion that the amendment is within the scope of the Governor's call as a fee and not a tax.

Cordially,

ROBERT W. PICKRELL
The Attorney General

WILLIAM CLARK KENNEDY
Chief Assistant Attorney General

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