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May 2, 1969

DEPARTMENT OF LAW OPINION NO. 69-14 (R-75)

REQUESTED BY: THE HONORABLE JAY C. STUCKEY
Arizona State Representative

QUESTION: May the City of Phoenix impose taxes
on liquor, cigarettes and gasoline?

ANSWER: A. Liquor, yes.
B. Cigarettes, yes, as qualified in
the body of the opinion.
C. Gasoline, no.

The power to impose a tax must be conferred on a city by some legislation in order to warrant the imposition of the tax by the city. City of Glendale v. Betty, 45 Ariz. 327, 43 P. 2d 206; Kaufman v. City of Tucson, 6 Ariz. App. 429, 433 P. 2d 282. It is axiomatic that municipal corporations have only such powers as are expressly or by reasonable implication from their charters conferred upon them by the Legislature. Holbrook v. Nutting, 57 Ariz. 360, 114 P. 2d 226. Accordingly, if the City of Phoenix has the authority to impose gasoline, cigarette or liquor taxes, it is because the constitution or statutes of the State of Arizona or the charter of the City of Phoenix provide the authority to impose such taxes.

The constitutional provisions applicable to the power to tax and the power of cities to levy taxes are as follows:

Art. 9, Sec. 12. "Authority to provide for levy and collection of license and other taxes

"The law-making power shall have authority to provide for the levy and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes, also graduated income taxes, graduated collateral and direct inheritance taxes, graduated legacy and succession taxes, stamp, registration, production, or other specific taxes."

Art. 9, Sec. 6. "Local assessments and taxes

"Incorporated cities, towns, and villages may be vested by law with power to make local improvements by special assessments, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes."

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Cigarette, gasoline and liquor taxes fall within the description of Article 9, Sec. 12 "license, franchise, gross revenue, excise, . . . taxes."

A city has the power to impose liquor license fees under the provisions of A. R. S. Sec. 4-223(A), Kaufman v. City of Tucson, 6 Ariz. App. 429, 433 P. 2d 282. A. R. S. Sec. 4-223(A) provides as follows:

"In addition to the taxes provided for in this chapter, incorporated cities and towns shall have the power to tax the manufacture, sale, possession, distribution, and disposal of spirituous liquors within their corporate limits, . . ."

Accordingly, it is our opinion that the City of Phoenix may impose a license tax on the sale of alcoholic beverages in accordance with the provisions of A. R. S. Sec. 4-223.

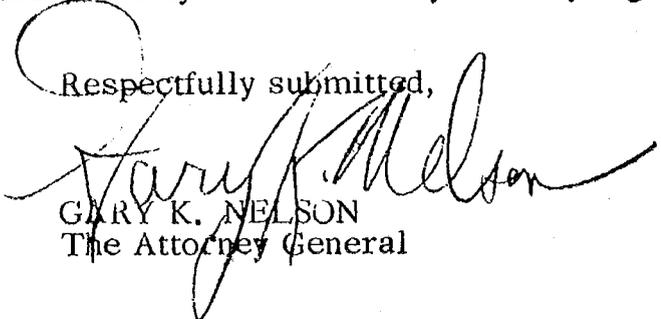
The state has not preempted the field of excise taxation. The City of Phoenix has the power to impose license taxes on the privilege of doing business under Chapter 4, Sec. 2, paragraph 28 of the Charter of the City of Phoenix. Phoenix v. Arizona Sash Door & Glass Co., 80 Ariz. 100, 105, 293 P. 2d 438. Chapter 4, Sec. 2, paragraph 28 of the Phoenix charter provides that the Commission shall have the following powers:

"28. To license, for the purpose of regulation and revenue, all and every kind of business, profession, calling, trade or occupation not prohibited by law to be transacted or carried on in the city; to fix the rates of licenses upon the same. . . ."

In Stults Eagle Drug Co. v. Luke, 48 Ariz. 467, 62 P. 2d 1126, a luxury tax on cigarettes and other tobacco products was held to be an excise or privilege tax. Accordingly, it is our opinion that the City of Phoenix may impose a license or privilege tax on the business of selling cigarettes and other tobacco products under the provisions of Chapter 4, Sec. 2, paragraph 28 of the Charter of the City of Phoenix and that such tax may be based on either the purchase price or the quantity of the item sold.

Since Article 9, Sec. 14 of the Arizona Constitution provides how all money raised by motor vehicle fuel taxes must be used and how it must be distributed, the state has preempted the field of motor vehicle fuel taxes. Phoenix v. Popkin, 93 Ariz. 14, 16, 378 P. 2d 242. Accordingly, it is the opinion of the Attorney General that the City of Phoenix may not levy a gasoline tax.

Respectfully submitted,


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The Attorney General