

(R 75-199)

75-73

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ARIZONA ATTORNEY GENERAL

April 1, 1975

The Honorable Richard J. Riley
Post Office Drawer CA
Bisbee, Arizona 85603

Re: Applicability of Motor Carrier License Tax
to City of Bisbee Ambulance Service

Dear Dick:

In your letter to our office dated December 26, 1975 you asked whether the City of Bisbee is obligated to pay the motor carrier license tax imposed under the provisions of A.R.S. § 40-641 on revenues received by the City for ambulance services provided to residents of the City of Bisbee. The answer is "No".

The facts presented indicate that an organization formally known as the Cochise Ambulance & Service Company, Inc., had, in the past, operated an ambulance service in the City of Bisbee. When the aforementioned ambulance company ceased operations, the Bisbee City Council decided that the City should establish its own ambulance service using manpower provided by the Bisbee Fire Department, utilizing an ambulance purchased by the City from Cochise County.

In order to at least partially defray the costs of operating this ambulance, the City makes a charge for the furnishing of ambulance service although the revenue generated by such charges is insufficient to pay operating costs.

Contending that this operation constituted either common or contract carriage of passengers for hire, the Arizona Department of Transportation sent a letter to the City of Bisbee indicating that it intended to tax the aforementioned gross revenues pursuant to A.R.S. § 40-641.

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At first glance, it might appear that resolution of this problem is governed by Article IX, §2 of the Arizona Constitution which statutes that all municipal property shall be exempt from taxation. However, our courts have held that this section relates only to property or ad valorem taxes and not to excise taxes. City of Phoenix v. Bowles, 65 Ariz. 315, 180 P.2d 222 (1947); City of Phoenix v. State ex rel Conway, 53 Ariz. 28, 85 P.2d 56 (1939). Since the Motor Carrier License Tax is an excise tax, not a property ad valorem tax, the constitutional exemption is inapplicable.

It appears therefore that the principal issue to be decided herein is the question of whether or not the ambulance service provided by the City of Bisbee is a "public service corporation" subject to regulation by the Arizona Corporation Commission under the provisions of Article XV, §2 of the Arizona Constitution, or in the alternative, a "municipal corporation" not subject to taxation or regulation as a common or contract carrier for hire. Tucson Transit Authority, Inc. v. Nelson, 107 Ariz. 246, 485 P.2d 816 (1971). By constitutional definition, "All corporations other than municipal engaged in carrying persons or property for hire; . . . shall be deemed public service corporations." (Emphasis added) Article XV, §2 of the Arizona Constitution.

Since the ambulance in question is titled in the name of the City of Bisbee, a political subdivision of the State, and the financial responsibility for the assumption of any debts incurred by the ambulance service rests squarely upon the shoulders of the City of Bisbee, it would appear that the Bisbee Ambulance Service is in fact a municipal corporation rather than a public service corporation and therefore may not be classified as either a common or contract carrier for purposes of taxation.

A city does not change its character by engaging in an enterprise which if engaged in by a private corporation would make it a public service corporation. City of Pasadena v. Railroad Commission, 183 Cal. 526, 192 P.25 (1920);

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City of Phoenix v. Wright, 52 Ariz. 227, 230, 80 P.2d 390 (1938). In Rubenstein Const. Co. v. Salt River Project Agr. Improvement & Power Dist., 76 Ariz. 402, 404, 265 P.2d 455 (1953), our Arizona Supreme Court held that municipal corporations do not lose their "municipal" status and become "public service corporations" by engaging in proprietary functions.

Stated another way, the draftsmen of the Constitution of the State of Arizona in conferring powers upon the Corporation Commission with regard to regulation of public utilities, never intended to include municipal corporations engaged in common carrier operations. Menderson v. City of Phoenix, 51 Ariz. 280, 76 P.2d 321 (1938). As a corollary to that principle it is also clear that the Department of Transportation may not treat municipalities engaged in the carriage of passengers for hire as common or contract carriers within the meaning of A.R.S. § 40-601 for purposes of taxation.

The Court in Menderson, supra, although it did not directly address itself to the question of the taxability of revenues derived by a municipality acting as a common carrier, did hold that the Corporation Commission was without power to regulate a municipal transportation line.

Under the provisions of A.R.S. § 40-641 a tax is imposed on contract and common motor carriers of passengers. "Common carrier" is a term that may have different interpretations for tax purposes than for regulatory purposes. Claypool v. Lightning Delivery Company, 38 Ariz. 262, 272, 299 P.126. In this case the terms "common motor carrier of persons" and "contract motor carrier passengers" are defined by A.R.S. § 40-601 for both tax and regulatory purposes. Since these terms are defined by the statutes for regulatory purposes, the definition must be read in the light of the constitutional limitation of Article XV, §2 defining various types of businesses including common carriers as public service corporations and excluding municipal corporations operating as common carriers from the definition.

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The same words in the same section of the statutes cannot have one meaning for one purpose that is within the scope of the statute, and another meaning for another purpose that is also within the scope of the statute. If the same statutory language that is used in the single statute is to have different meanings for different purposes, the statute would be so ambiguous that its meaning could not be ascertained. Such absurd constructions of statutes are to be avoided.

Since the statutory definition of A.R.S. § 40-601 must be read in the light of the constitutional limitation of Article XV, §2 of the Constitution, the terms "common carrier of passengers" and "contract carrier of passengers" in A.R.S. § 40-601 and A.R.S. § 40-641 do not include municipal corporations. Therefore, we conclude that, the City of Bisbee may not be classified as either a contract or common carrier for hire, taxable under the provisions of A.R.S. § 40-641.

Very truly yours,

BRUCE E. BABBITT
The Attorney General

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