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July 5, 1951
Op. No. 51-184

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ARIZONA ATTORNEY GENERAL

Mr. Barry De Rose
County Attorney
Gila County
Globe, Arizona

Dear Mr. De Rose:

We have your letter of April 24, wherein you request an opinion from this office on the following questions:

- "(1) Is there any possible way to tax the Co-op Store operated by the San Carlos Tribal Council.
- (2) I have been taxing automobiles owned by the Indians who reside on the San Carlos Indian Reservation; is this legal?"

We assume that in your first question the tax you are referring to is the personal and real property tax which the County is required to collect. Article 20, Section 5, of the Arizona Constitution provides:

" * * * no taxes shall be imposed by this state on any lands or other property within an Indian reservation owned or held by any Indian; * * * "

It would seem to us that the words "any lands or other property" would be broad enough to include both personal and real property.

In Volume 34 of Words and Phrases, page 413, the word "property" is defined. It is therein stated:

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"Real and personal property are included by term 'property'. In re Gunderson's Will, 211 N.W. 791, 794, 191 Wis. 557.

* * * * *

Term 'property' held to include such real and personal property. Brooklyn City R. Co. v. Kings County Trust Co., 212 N.Y.S. 343, 346, 214 App. Div. 506.

* * * * *

'Property' is a generic term of extensive application. It includes real and personal estate, and the right and title to and interest in the same. Russell v. Ralph, 10 N.W. 518, 519, 53 Wis. 328; McKeon v. Bisbee, 9 Cal. 137, 142, 70 Am. Dec. 642; Prima v. City of Belleville, 59 Ill. 142, 144."

Thus it is our opinion that in view of the constitutional provision, above quoted, the County is prohibited from taxing either the personal or real property belonging to the Co-op Store operated by the San Carlos Tribal Council on the San Carlos Indian Reservation.

In answer to your second question, we are going to break it down into two parts: first, Indians who reside on the San Carlos Indian Reservation but who also use their automobiles on state highways off the reservation; and second, Indians who reside on the reservation but do not use their automobiles on state highways off the reservation.

It is our opinion Indians who reside on the reservation but use their automobiles on state highways off the reservation should be required to pay the license tax on such automobiles. Section 66-204, Arizona Code, states:

"Registration of motor vehicles.--
(a) Every owner of a motor vehicle, trailer or semi-trailer, before the same if (is) operated upon any highway in this state, shall apply to

the vehicle division for a certificate of title thereto and the registration thereof."

Section 11, Article 9, of the Arizona Constitution provides:

"Assessment law--Registered vehicle license tax.--The manner, method and mode of assessing, equalizing and levying taxes in the state of Arizona shall be such as is prescribed by law.

Beginning January 1, 1941, a license tax is hereby imposed on vehicles registered for operation upon the highways in Arizona, which license tax shall be in lieu of all ad valorem property taxes on any vehicle subject to such license tax.
* * *

It should be noted that under Section 66-204 only automobiles that are used on the state highways are required to be registered and that the license tax set forth in Article 9 of the Constitution is only imposed on vehicles subject to registration; therefore, a person, be he Indian or White, need not register or pay a license fee on his automobile unless the automobile is used on the state highways. The tax is entirely voluntary on the part of the owner of the vehicle for if he does not apply for registration he does not have to pay it. It is not collected by distraint or levy upon the property or by proceedings against the owner as is the case with ad valorem and income taxes. This was so held in Lebeck v. State of Arizona, 62 Ariz., page 171, 156 Pac. 2d. For these reasons it is our opinion that Article 20, Section 5, of the Arizona Constitution, heretofore quoted, has no application to license tax on automobiles where the automobile is driven on state highways off the Indian reservation.

Answering the second part of this question relating to Indians who use their automobiles on the reservation but do not use them on state highways outside of the reservation, the question is much more difficult.

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In the case of State v. Tucker, 296 N.W., page 641, this precise question was before the Wisconsin court and that court held that an Indian who drove his car wholly within an Indian reservation but used the state highways within such reservation must pay the registration fee required by all persons who used the state highway. At page 647 of this case the court said:

" * * * When a public highway operated by the state is the subject of the right of way, the control, policing and other regulations which are inseparable incidents to the maintenance of such a highway must pass to the state and with them, at least in the absence of a clear reservation, the jurisdiction to make them effective. * * *

* * * * *

* * * and that the rights of the Indians to use the highway are the same as those of the general public and subject to the same regulations and restrictions.
* * * "

This is the only case we have been able to find dealing directly with this question and apparently Wisconsin has no constitutional provisions prohibiting taxation of Indian property within the reservation. Thus were it not for our constitutional provision providing that no taxes shall be imposed on any lands or other property within an Indian reservation owned or held by an Indian we would agree with the decision of the Wisconsin court.

But in view of this provision, it is our opinion that a strict construction of such provision would exempt Indians from paying license tax so long as the car is not used off the reservation. Should the automobile be used off the

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reservation, however, even only on occasional instances,
then the automobile is subject to the license tax.

Yours very truly,

FRED O. WILSON
Attorney General

KENT A. BLAKE
Assistant Attorney General

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