



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

September 28, 1990

Rhonda K. Davis, Registrar
Registrar of Contractors
800 W. Washington, 6th Floor
Phoenix, Arizona 85007

Re: I90-091 (R90-087)

Dear Ms. Davis:

You asked whether an ordinance of the City of Tucson, which requires state licensed construction contractors to pay a city license fee, contravenes the state's contracting statutes, A.R.S. §§ 32-1101 to -1170.03. We conclude that the license fee imposed by the City of Tucson is a local occupation or privilege tax, and does not contravene state statutes.

The City of Tucson is organized and operates under a "home rule charter." City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon, 67 Ariz. 330, 334, 195 P.2d 562, 564 (1948), A home rule charter grants a city certain rights and privileges, free from legislative interference, on matters of "local concern." Luhrs v. City of Phoenix, 52 Ariz. 438, 442, 83 P.2d 283, 285 (1938). See also, Ariz. Const. art. 13, § 2; City of Tucson v. Tucson Sunshine Climate Club, 64 Ariz. 1, 3-4, 164 P.2d 598, 599-600 (1945) (holding that a home rule charter may not contravene the state constitution or general laws but must be consistent with and subject to the constitution and state laws).

Securing revenue for a city has been held to be peculiarly a matter of local concern, and a city is not prohibited from imposing a license tax in the same manner and on the same source as the State. Barrett v. State, 44 Ariz. 270, 273, 36 P.2d 260, 261 (1934) ("[T]hat the state may seek revenue from the same source and in the same manner does not make the

common source of revenue so purely a subject of state-wide concern that the city cannot also secure funds therefrom.") Accord, Flagstaff Vending Company v. City of Flagstaff, 118 Ariz. 556, 559, 578 P.2d 985, 988 (1978).

Chapter IV, section 1(18) of the City's charter authorizes Tucson to license any profession, trade, calling, occupation or business carried on within the city limits, fix the amount of license tax to be paid by all persons engaged in such activities, and to provide for the manner of enforcing the payment of the license tax. This charter provision authorized Tucson to enact Tucson City Code ("TCC") § 19-2, which requires a license of all persons doing business in the city.^{1/} This charter provision also authorized Tucson's enactment of TCC §§ 19-415 to -418, which contain the details of Tucson's privilege tax license status including the applicable tax rates.

Chapter IV, of the Tucson Charter and TCC §§ 19-2 and 19-415 to -418 enable Tucson to secure revenue for the City of Tucson by requiring a license to engage in contracting. The charter and ordinances refer to the privilege license as a "tax", and discuss the "tax-rate" to be applied in order to determine the fee amount. The city ordinance does not require any more than the payment of a fee in order to obtain a license. Although the ordinance refers to "regulation," the context of the ordinance indicates that the term means that Tucson has authority to prohibit someone from engaging in contracting without paying the privilege license tax. The ordinance does not provide for regulation of a contractor's business upon payment of the license tax. This evidences an intent not to regulate, but to receive revenue. See Barrett v.

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Sec. 19-2. License required.

It shall be unlawful . . . to commence, practice, transact or carry on any trade, calling, profession, occupation or business, as set out in this article without first having procured a license from the city to do so, or without complying with any and all regulations of such trade, calling, profession, occupation or business designated in this article; and the practicing, transacting or carrying on of any trade, calling, profession, occupation or business specified in this article, without first having procured a license from the city to do so, or without complying with any and all regulations of such trades, callings, professions, occupations or business contained in this article, shall constitute a separate violation of this article for each and every day that such trade, calling, profession, occupation or business is practiced, transacted or carried on

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State, 44 Ariz. 270, 273, 36 P.2d 260, 261 (1934) (holding that a charter city could enact a liquor license ordinance for the main purpose of securing revenue, notwithstanding state law to secure revenue from same source and in same manner).

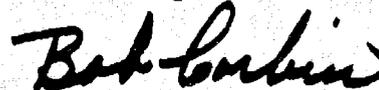
You also asked whether the the Tucson City Code violates A.R.S. § 32-1101.01, which provides as follows:

The legislature determines that the licensing of construction contractors is a proper state function. Cities, including charter cities, towns and counties shall not require licenses of any construction contractor licensed by statute prior to the effective date of this section.

A.R.S. § 32-1101.01.

This statute, enacted in 1981 when the legislature deregulated commercial contracting, prevented cities, towns and counties from enacting licensing requirements to replace those which the state had repealed. See Laws 1981 (1st Reg. Sess.) Ch. 221, §§ 1, 3. The statute does not, however, limit a municipal government's authority to enact a revenue measure. Flagstaff Vending Company v. City of Flagstaff, 118 Ariz. at 559, 578 P.2d at 988; Barrett v. State, 44 Ariz. at 273, 36 P.2d at 261. Therefore, we conclude that the City of Tucson may impose the license tax on state licensed contractors conducting business in the city.

Sincerely,



BOB CORBIN
Attorney General

BC/LCG/GH/dps