

OPINION
46-248

February 6, 1946 (OPINION)

SALES TAX

RE: Exemptions

Attention: A. J. Vensel, Sales Tax Deputy

This office is in receipt of your letter of February 4, 1946, in which you say:

A nurses' home has recently been constructed by the Trinity Hospital at Minot. Said hospital entered into contracts with a building contractor, electric and plumbing contractors. The building contractor has agreed to pay to the State 2% sales tax on 40% of the contract price but refuses to pay 2% sales tax on the 60% of said contract for the reason that the 60% of the contract cost is to be paid by federal funds in the form of a grant by the Federal Government to the Trinity Hospital.

Can the 60% be exempted from the 2% sales tax since it is in the form of a grant by the Federal Government to the hospital who in turn entered into contracts with various contractors, contracts providing that said contractors furnish all tangible personal property necessary for the completion of said contracts?"

Exemptions from the provisions of the sales tax are found under section 3 of chapter 308 of the Session Laws of 1945. A charitable or eleemosynary corporation or association is granted, to the extent prescribed law, exemption from the general property tax and the income tax, but such exemption does not extend to or include the sales tax. Under subsection (a) of section 3 of chapter 308 "the gross receipts from sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of this state" are exempt from the provisions of the Sales Tax Act, but the privilege of exemption does not extend to hospitals or charitable institutions.

In the case of Federal Land Bank v. Bismarck Lumber Co., 86 L. ed. 66, 314 U.S. 95, the supreme court of the United States held that Congress "may protect from state and local taxation the corporate instrumentalities which it has created." I am not aware that the Minot hospital has been created or designated as an instrumentality of the United States, except possibly to the extent of training cadet nurses, nor am I aware of any federal or state statute which exempts purchases by a charitable or eleemosynary institution from the state sales tax even though the goods purchased are paid for out of moneys granted or donated by the federal government.

I am not informed under what conditions, reservations, and stipulations the federal grant was made to the hospital at Minot. But assuming that the hospital is a federal instrumentality (and as far as I am aware there is no justification for such assumption),

nevertheless, exemption from the sales tax would not extend to the contractors who entered into building contracts with the hospital. It is my understanding that the contractors purchased the materials and equipment for the required construction, and the fact that the hospital paid them partly out of moneys granted by the federal government does not confer upon them any exemption from payment of the sales tax.

If the contractors, mentioned in your letter, contend that they are exempt from paying sales tax on sixty percent of the contract price of the construction for the Minot hospital, they should ask the tax commissioner for a hearing, and at such hearing should establish a legal basis for their claim.

NELS G. JOHNSON

Attorney General