

OPINION
59-30

August 21, 1959 (OPINION)

ALCOHOLIC BEVERAGES

RE: Tax On - Military Post Clubs Subject To

We have received your letter of July 16, wherein you ask the following questions:

1. Are officers and noncommissioned officers clubs on military bases in this state exempt from payment of our state beer and liquor tax?
2. Is the North Dakota National Guard exempt from state beer and liquor taxes?

In answer to your first question it should be noted that we have no statute exempting officers clubs and noncommissioned officers clubs from the payment of state beer and and liquor taxes. Legislation has been introduced at the last two legislative sessions in this state seeking tax exemption from beer and liquor taxes on the air bases in Minot and Grand Forks, but no exemption was authorized by the Legislature. It should further be noted that all military installations in this state are on deeded land with the exception of Fort Lincoln south of Bismarck and the federal government has not claimed exclusive jurisdiction thereon. It should perhaps also be mentioned that while post exchanges and other such government outlets are generally considered instrumentalities of the federal government, officers and noncommissioned officers clubs are not.

Many states have passed statutes exempting all outlets on military bases or installations from payment of beer and liquor taxes and in those states, of course, there is no problem. However, in most of the states where no exemption has been granted, officers and noncommissioned officers clubs are required and do pay beer and liquor taxes.

Subsection 2 of the Twenty-first Amendment to our federal constitution provides, "The transportation or importation into any state, territory or possession of the United States for delivery or use thereof is hereby prohibited."

While it is true that a state relinquishes jurisdiction over land areas in which military installations are established the state does not lose control of alcoholic beverages thereon because of the right given the states in that respect by the Twenty-first Amendment. Only an act of the state legislature can grant tax exemption on alcoholic beverages.

For the above stated reasons it is our opinion that officers and noncommissioned officers clubs located on military bases in this state are not exempt from the payment of state beer and liquor taxes.

In answer to your second question, we can only say that the National Guard of North Dakota is state-controlled and could not be defined as in instrumentality of the federal government, and thus cannot without legislative enactment be granted tax exemption from state taxes on beer and liquor.

LESLIE R. BURGUM

Attorney General