

Overruled by N.D.A.G. 85-19

**OPINION
61-26**

August 1, 1961(OPINION)

CHARITABLE ORGANIZATIONS

RE: License - Exemptions

This is in response to your letter in which you enclosed correspondence from the Red Cross representative and then asked for an opinion whether or not the American National Red Cross comes within the provisions of Senate Bill 146 of the 1961 Legislature, which is now chapter 50-22 of the North Dakota Century Code (pocket part). Independently of your letter we were furnished with various material, including opinions from Attorneys General of other states.

The provisions of chapter 50-22, particularly section 50-22-02, provides that:

No charitable organization shall solicit contributions from persons in this state by any means whatsoever without first having obtained a license from the secretary of state."

Subsection 2 of section 50-22-01 defines a charitable organization to mean:

'Charitable organization' means any benevolent, philanthropic, patriotic, or eleemosynary organization or one purporting to be such, except Boy and Girl Scouts of America organizations and organizations soliciting funds for institutions of higher learning, and organizations soliciting funds for churches operating and having a place of worship within the state;"

Emphasis supplied.

Thus, from the context of the statutes in question, we are unable to find any exemptions which may be applicable to the American National Red Cross. We are aware that the American National Red Cross was created pursuant to Title 36, chapter 1, section 1 of the United States Code. As such, it might be considered as a quasi governmental agency (federal).

There is some general authority to the effect that a state may ordinarily not impose a license or excise tax on the activities of, or a sale to, the federal government or on one of its agencies.

However, the same authority points out that it has been held that a state may impose a license or excise tax for a privilege or occupation if the tax does not interfere in any

substantial way with the performance of federal functions or does not impose unconstitutional burden on such functions. This rule has been further explained to mean that the state may exact a privilege tax which does not prevent the discharge of duties to the federal government, as where the tax merely affects an activity which is not a necessary incident of the functions performed for the federal government. Also, in instances where the business is separable from such function.

Similarly, it has been held that a privilege tax based on gross income receipt sales may be imposed on that portion of the business or activity which consists of sales to a federal land bank. See 53 C.J.S. Licenses, section 6, pages 469, 470 and 471.

This same authority also states that the occupation or privilege tax or license may not be imposed upon federal agencies which are exempt by congressional act. In other words, if a certain agency is specifically exempt by virtue of federal legislation, then the state may not impose a privilege or occupation tax or license. See 53 C.J.S. Licenses, section 29, page 557.

In reviewing the provisions of Title 36 of the United States Code pertaining to patriotic societies and observances, we do not find that congress has specifically exempted the organizations created thereunder from any state occupation or privilege tax. We have checked and compared out statute with statutes of the states in which the Attorneys General ruled that the American National Red Cross was exempt, and it was found that the statutes there were substantially different and used a much broader language in its exemptions, that is, language which provides which organizations do not come within the act.

We do realize that the license in the present instance is not on the gross sale or receipts, but is on the business activity. We are also impressed that the license fee is not for purposes of providing revenue for the State of North Dakota, but is as a means of regulating charitable organizations which solicit funds in the State of North Dakota.

We believe that the objective of the state law can be found in section 50-22-04. This section provides that the charitable organizations which are authorized to do business in the state or as a condition to do business in the state must file reports with the Secretary of State. This, we might consider to be the real purpose for the enactment of this law.

We might give considerable weight to the fact that the American National Red Cross is a quasi governmental agency, but we are also strongly impressed with the fact that the North Dakota Legislature specifically exempted Boy and Girl Scouts of American which are similar quasi federal governmental agencies, and which were respectively created by Title 36, chapter 2, section 21, and Title 36, chapter 2a, section 31. Thus, where the Legislature named two organizations which are to be considered to be quasi governmental agencies to be exempt under the provisions of chapter 50-22, the naming of such organizations is to the exclusion of all others.

We, therefore, come to the conclusion that we cannot as a matter of law place the American National Red Cross in an exemption provision from the clear unambiguous language of the act. The language employed by the North Dakota Legislature under all rules of statutory construction would not permit us to read into the provisions an exemption for the American National Red Cross. We are, therefore, concluding that the North Dakota Legislature specifically wished to include every organization except those specifically named in the exception or coming within the other class of exemptions.

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