



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Marvin H. Brown, Jr.
Criminal District Attorney
Fort Worth, Texas

Dear Sir:

Opinion No. 04291

Re: Is the American National Red Cross or the United Service Organization an agency or instrumentality of the United States Government and thereby entitled to sell cigarettes in Texas on troop trains without payment of the cigarette tax levied by Article 7047c, Vernon's Texas Civil Statutes?

Your letter of December 18, 1941, submits for our opinion the following question, which we quote therefrom:

"Fort Worth is a large railroad center and there are many troop trains through here every day. Under government regulations the boys on the trains in movement cannot leave the cars since they are sealed.

"It is necessary for them to have some sort of refreshment as well as cigarettes on their long journey in behalf of our country.

"The Red Cross together with the United Service Organization are planning to establish a canteen service in the railroad yards and to serve coffee and donuts to the soldiers free of charge and sell them cigarettes, tobaccos and candies at actual costs if they so desire to purchase same.

"We are familiar with Article 7047c-3, Vernon's Supplement to Revised Statutes of 1925, known as Senate Bill No. 91, passed by the Forty-seventh Legislature. We interpret the trains as being a part of military reservation and we certainly know that the Red Cross and United Service Organization are under the direct control of the United States Government.

"These Organizations desire to know whether they can sell cigarettes through this canteen service without the payment of the state tax. This office is of the opinion that under the law cited above that such sales can be made free of the tax.

"You must understand that these sales will be entirely within the railroad yards and the trains will not come to or near the rail station and the sales will be made entirely on these Army trains."

An examination of Article 7047c-3, Vernon's Texas Civil Statutes, cited by you as affording immunity from the cigarette tax, under the facts before you, convinces us that it does not operate to create such exemption. A troop train, regardless of its status as a part of the United States Army, Navy or Marine Corps on authorized military maneuvers, is clearly not a "post, camp, or unit exchange" within the purview and contemplation of the exempting Act, from which we quote the following pertinent portions:

"Section 1. Post, Camp, or Unit Exchanges established and operated within the State of Texas, by or in conjunction with the United States Military, Naval or Marine forces, on Military, Naval or Marine Posts, Camps, Stations or Reservations, including any locality within this State where a cantonment camp is located and erected, where officers, soldiers, sailors, nurses, or marines of the United States Army, Navy or Marine Corps are being trained, are hereby declared to be, and are recognized for such tax purposes as are hereinafter set out to be instrumentalities and agencies of the United States Government.

"Section 2. It is further provided that the provisions of this law shall extend to and apply to any authorized branch of a post, camp or unit exchange which may be established for the exclusive benefit of the officers, soldiers, sailors, nurses or marines in the Army, Navy or Marine Corps of the United States at any time that said officers, soldiers, sailors, nurses or marines shall be on authorized military maneuvers. It being the express intent of the Legislature by this Act to allow soldiers, sailors, nurses and marines in the Army, Navy and Marine Corps of the United States, to purchase cigarettes, from the camp, unit, or post

exchange without paying the state stamp tax thereon. It is also expressly provided that this law shall not be construed as authorizing any person or persons whatsoever, other than those persons authorized by Federal Law and Army, Navy or Marine Corps regulations to purchase cigarettes from a camp, unit, or post exchange, or on authorized military maneuvers without paying the state stamp tax as provided by law thereon.

" * * *

"Section 4. It is further recognized, declared and provided that the provisions of Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, with amendments, relating to 'first sale' of cigarettes does not apply to sales by such post, camp or unit exchanges under the conditions specified in the preceding sections of this law or to sales in accordance with such specified conditions to such post, camp or unit exchanges by a licensed cigarette distributor in Texas."

The purpose, nature and plan of operation of "post, camp, or unit exchanges," expressly made the subject of the above legislation, is fully described in our Opinion No. O-4392, copy of which we enclose for your information. We believe you will conclude therefrom that neither a troop train proceeding under Government regulation and duly sealed during movement, nor any part of the United States Army, Navy or Marine Corps on authorized military maneuvers, nor the American National Red Cross nor the United States Service Organization is or constitutes a "post, camp or unit exchange established and operated within the State of Texas, by or in conjunction with the United States Military, Naval or Marine forces," etc. under controlling court decisions and War Department regulations, so as to be brought squarely within the scope and operation of the statute exempting the latter organizations from the cigarette tax. Many conceivable organizations, societies or concessionaires might properly and under due authorization, sell cigarettes and other taxable commodities within the confines of established military posts or reservations or in connection with a portion of the regular Army, Navy or Marine Corps on authorized maneuvers or on movement by troop train, without enjoying the immunity from state taxation accorded recognized agencies or instrumentalities of the Federal Government such as "post, camp or unit exchanges." It was the plain intent of the Act under consideration,

as expressed in its caption, "to declare and recognize for certain tax purposes, post, camp or unit exchanges established and operated within the State of Texas, by or in conjunction with the United States Military, Naval or Marine forces to be instrumentalities and agencies of the United States;" and the instant factual situation not falling within such classifications, we must determine, independent of said statute, whether or not the organizations involved are instrumentalities or agencies of the Government so as to be exempt from state taxation under general constitutional principles.

We have no difficulty in holding the American National Red Cross, or any duly organized or existing chapter thereof, to be an agency or instrumentality of the United States Government. Its national status is so established by Title 36, Chapter 1, Sections 1-12 of the United States Code Annotated. By the statutes adverted to "The American National Red Cross" is created a body corporate and politic in the District of Columbia, with the usual corporate incidents, for the purpose of furnishing volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the Conference of Geneva of October, 1863, and also of the Treaty of the Red Cross, or the Treaty of Geneva of August 22, 1864, to which the United States of America gave its adhesion on March 1, 1882. Moreover, the Secretary of State, the War Department, the Treasury Department and three Presidents of the United States have assumed and recognized the governmental purpose, nature and status of the American National Red Cross. Congress, in addition to enacting measures for its original incorporation and subsequent reincorporation, has, from August 3, 1882, until a recent date, successively and repeatedly appropriated funds for its furtherance and maintenance in some respects. And the courts have joined in this Congressional, executive and administrative recognition of the national or governmental status of the organization. *Grangow vs. United States*, 261 Fed. 172; *American National Red Cross vs. Felzner Post*, 159 N. E. 771.'

But our research has not developed nor have we been furnished any authority or basis, either congressional, administrative or judicial, for holding that the United Service Organization occupies a similar status as a Federal agency or instrumentality so as to enjoy immunity from the burden of state taxation. Your letter does not outline the purpose, nature and plan of operation of the United Service Organization and its various units. But according to information available from other sources, this organization is composed of the Y.M.C.A., Y.W.C.A., National Catholic Council, Jewish Welfare, Travelers' Aid, and the Salvation Army -

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all organizations or societies which are, within themselves, existing incidents of civil or religious life, wholly divorced from any notion or status of Federal agencies or instrumentalities. The laudable work and worth of the United Service Organization, of which these various civic and church organizations are component parts, in furnishing the social and recreational facilities and activities so necessary to the sustained morale of our fighting forces, is fully recognized by this department; but absent some legislative, executive or judicial authority conferring upon such Organization the status of an agency or instrumentality of the Government, we are constrained, under the facts at our disposal, to hold that such organization is not of governmental character.

It is accordingly our opinion that the American National Red Cross, as an agency or instrumentality of the Federal Government, is, under principles of constitutional immunity established by the courts, exempt from such state taxation as operates to place a direct burden upon its activities and functions, including the sale, by it, of cigarettes on troop trains; but, on the other hand, the United Service Organization, as presently organized and conducted, is not an agency or instrumentality of the Government and does not enjoy such tax immunity.

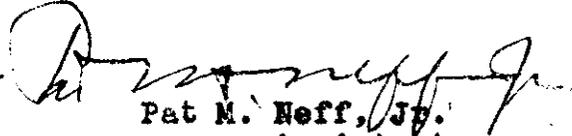
However, in holding that the American National Red Cross may, under the factual situation, lawfully sell cigarettes, without payment of the cigarette tax levied by Article 7047c, Vernon's Texas Civil Statutes, we do not pass upon the question of whether or not such tax may be lawfully collected on sales by "distributors" of cigarettes, as defined by said Act, to the American National Red Cross within this state.

Trusting the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By


Pat M. Neff, Jr.
Assistant

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