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#91002

STATE OF NEBRASKA
OFFICIAL
JAN 9 1991
DEPT. OF JUSTICE

DATE: January 9, 1991

SUBJECT: Payment by the State of Occupation Taxes Imposed by a Municipality

REQUESTED BY: John Rochford, Director, Department of Administrative Services

WRITTEN BY: Robert M. Spire, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have requested our opinion concerning whether the state should pay occupation taxes levied by political subdivisions. You indicated that you have received various inquiries from agencies of the state concerning payment of these taxes. The materials accompanying your request include a statement showing local taxes relating to electric utility service and a copy of a municipal ordinance establishing an occupation tax for room accommodations of city hotel operators.

It is our view that the state and its agencies are not the proper subject of local occupation taxes without specific statutory authority and these taxes should not be paid by the state in the absence of this authorization or consent.

A municipality may not levy taxes on another municipality, a county, the state, agencies of the state, the United States or its agencies, in the absence of consent. We are not aware of any agreement or statutory consent of the state or its agencies to pay occupation taxes imposed by municipalities. Further, we do not find any specific or express statutory authority which subject the state to local occupation tax levies.

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Statutory authority for the imposition of an occupation tax by a municipality is found in Neb.Rev.Stat. § 14-109 (Reissue 1987) and other statutes regarding municipalities. These statutes do not expressly or implicitly provide that occupation taxes may be levied against the state or its agencies. We are mindful that the local ordinances appropriately do not directly levy or impose taxes on the state or its agencies. For example, Art. XV, Sec. 19-700, of the Omaha Municipal Code imposes the occupation tax on the hotel operator. However, Sec. 19-703 does provide that the tax shall be collected by the hotel operator from the occupant.

In this sense, the tax would be imposed on the state because state employees traveling on state business are subject to the tax. State government business expenses are obligations of the state since the state is responsible for payment of the expenses through re-imbursement or direct payment through direct billing processes.

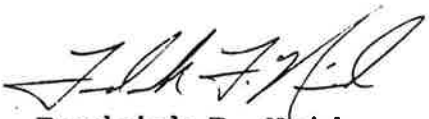
As a general rule, taxes may not be imposed by a state on its own agencies or instrumentalities, or those of its municipal corporations nor may taxes be imposed by a municipality on the agencies or instrumentalities of a state unless a statute specifically renders them subject to tax. 84 C.J.S. Taxation § 213, p. 410. This rule has been adopted by our Supreme Court in Consumers Public Power Dist. v. City of Lincoln, 168 Neb. 183, 95 N.W.2d 357 (1959).

In this case the City of Lincoln, through municipal ordinance, sought to impose an occupation tax on retail sales of electricity within the city upon Consumers Public Power District. Consumers Public Power District is organized as a public corporation and is a political subdivision of the State. The Court concluded that the ordinance purporting to levy the occupation tax was void and the tax uncollectible. In arriving at this conclusion, the Court stated that: "Municipalities have only such powers of taxation as are specifically granted by the legislature. . . . This appears so fundamental that a citation of authority seems unnecessary." Id. 168 Neb. at 187, 95 N.W.2d at 360.

Based on this authority it is clear that local occupation taxes may not be levied on nor collected from the state or its agencies or instrumentalities without specific statutory authority. For this reason, it is our opinion that the state should not pay the occupation taxes in question in the absence of specific legislative authority or consent.

Sincerely yours,

Robert M. Spire
Attorney General



Fredrick F. Neid
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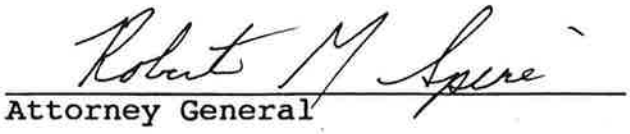
Approved By:



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