Opinion No. 203.

Taxation—Personal Property—Federal Land Bank—Motor Vehicles.

HELD: An automobile owned by the Federal Land Bank, and used by a field man in his work for the bank, is not subject to taxation by the state of Montana.

August 12, 1935.

Mr. L. D. French
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You have requested my opinion as to whether the state may tax an automobile owned by the Federal Land Bank and used by a field man in his work for the bank.

The law with regard to the power of the state to tax an agency of the Federal government is stated in 61 C. J. 371, Section 370, as follows: "It is not within the power of a state, unless by congressional consent, to lay any tax on the instruments, means, or agencies provided or selected by the United States Government to enable it to carry into execution its legitimate powers and functions." See also cases cited in footnotes 47 and 48, including Midnorthern Oil Co. v. Walker, 45 S. Ct. 440, 268 U. S. 45, 69 L.

Ed. 884, 44 A. L. R. 1454 affirming decision of Montana Supreme Court in 68 Mont. 550, 219 Pac. 1119.

Section 931, Title 12, U. S. C. A., provides: "Every Federal land bank and every National farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from federal, state, municipal and local taxation, **except taxes upon real estate** held, purchased or taken by said bank or association under the provisions of Section 761 and Section 781 of this chapter * * *."

Section 933 Id., reads: "Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and National farm loan associations from either state, county or municipal taxes to the same extent, according to its value, as other **real property** is taxed."

The Federal Land Bank was created by an Act of Congress and is undoubtedly an agency of the United States government. Since Congress has consented to the state taxing real estate only, belonging to the Federal Land Bank, it is my opinion that the state does not have power to tax the automobile in question.

A similar question was presented in Federal Land Bank v. State Highway department, (S. C. 1934) 173 S. E. 284, where it was held that the Federal Land Bank's automobile used in conduct of its business, was an instrumentality of the United States and not subject to a state license fee, even though the license fee is not a tax but a valid exercise of the police power of the state. The court said it would still be a burden imposed by the state upon an instrumentality of the general government. The language of Mr. Justice Brewer in South Carolina v. United States, 199 U. S. 437, was quoted as follows: "It is admitted that there is no express provision in the constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operation, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?" For analogous cases see the decisions pertaining to national banks which are collected in 61 C. J. 281, Sections 272-289. It is held that as national banks are agencies or instrumentalities of the United States government, in accordance with the principle that it is not within the power of a state to lay a tax on such agencies or instrumentalities, a state or territory has no power to subject a national bank or its property to taxation either directly or indirectly, except in so far as it is permitted by Act of Congress. (See Vol. 10, Opinions of Attorney General, p. 67; Vol. 16, No. 360.)