

**Automobiles, Registration of Government. Registration, of Government Owned Automobiles. Chauffeur Operating Government Vehicle, License of.**

The state cannot require the registration of government owned and government operated motor vehicles in the discharge of government business.

The state cannot require parties operating vehicles in the government employ to pass examination required by the state.

July 22nd, 1913.

Hon. C. F. Hawks,  
Acting Commissioner, Office Indian Affairs,  
Department of the Interior,  
Washington, D. C.

Sir:

I am in receipt of your letter requesting a statement from this department as to whether government owned motor vehicles are liable for the state registration charges; also requesting that a copy of the state law on this subject be forwarded to you.

Chap. 71, enacted by the last legislative assembly, relating to the licensing of motor vehicles, etc., being a revenue measure and having originated in the senate, is wholly void and inoperative for any purpose whatsoever.

Chap. 73, enacted by the Thirteenth Legislative Assembly, relates to registration, identification and regulation of motor vehicles. I enclose herewith a copy of this latter section.

The question as to the applicability of this law in all its provisions to government owned and government operated vehicles when in the service of the federal government is not wholly free from doubt, and I have not been able to find any decision of any court where the precise question has been considered. It is fundamental, in this state at least, that property belonging to the federal government is not subject to taxation.

Sec. 2, Art. XII, State Constitution.

Sec. 2499, Revised Codes of 1907.

And in the comparatively recent case of *Ford v. Great Falls*, decided by the supreme court of this state and reported in Vol. 46, Montana Reports, 292, 307, the court uses this language:

"The legislature, however, has no power to impose a tax of any character upon any property or instrumentality of the federal government."

In support of this principle a great many cases are cited. And, in addition to this last case, we may add

*Searight v. Stokes*, 3 Howard, 151,

Relating to the taxation of mail carriages, and also

*Dobbins v. Commissioners*, 16 Peters, 435,

Cited by you in your letter.

It is sometimes very difficult to distinguish between a police regulation and a tax, but it is certain that the state cannot, under the guise of an exercise of police power, impair the authority of the United States or hamper it in the discharge of the government business.

*Hannibal R. Co. v. Husen*, 95 U. S. 465.

*Chy Lung v. Freeman*, 92 U. S. 275.

8 Cyc. 865, Note 70.

If the state may require the government to register, in accordance with the provisions of state law, its motor vehicles, or other conveyances, instruments or implements used by it in the transaction of government business, or may require that those things shall

be operated only by persons who have passed the examination required by the state, the result might be a serious hampering of the government business. And, while there are some parts of this registration law which cannot by any possible stretch of the imagination be regarded as interfering with or hampering the discharge of government business, and perhaps enforceable as a necessary safety to the public, I am inclined to the belief that the state cannot require the government to list with it its implements, machinery or vehicles used in the transaction of government business, or to compel those acting for the government in the handling of this machinery or vehicles to submit to an examination under state law, and without entering into any discussion as to the relation between police power and taxing power, or to the relative authority of the government and the state, I am of the opinion that this registration law (Chap. 73, Session Laws of the Thirteenth Legislative Assembly of the State of Montana), in so far as it requires the motor vehicle to be registered with the secretary of state, is not operative as to government owned and government operated vehicles in the transaction of government business. I am also of the opinion that that part of the act which requires an examination and license of a chauffeur cannot apply to persons in the employ of the government operating such vehicles in the transaction of government business.

It is perhaps well, however, to keep in mind that it frequently happens that the government owned vehicle is used by the employes or officials of the government for purposes other than government business, and when so used, the fact that the government owns the vehicle would not be any protection to the parties using it for private purposes, and when used for private purposes the vehicles are not in the employ of the federal government, nor is there any federal law which extends to the private individual the protection of the federal rights and federal authority, exempting the government property from taxation, or police regulation kindred to taxation. This fact is here mentioned because it is probable that the conflict between state and federal authority, in many cases, has its basis in the private use of government owned property.

Very truly yours,

D. M. KELLY,  
Attorney General.