

state and county enforcement officers in the various counties can stop trucks and force them to procure Montana licenses while such trucks and their drivers are engaged, **exclusively**, in transporting fire-fighters, supplies, and equipment, and which trucks are operated from points out of Montana to points in Montana, and from points in Montana to points out of Montana. It appears that all of these trucks have licenses in their home state, and further it appears that these trucks are not owned by the federal government but are under contract with the federal government for this special purpose and no other, and that these trucks are traveling upon the roads of the State of Montana for no other purpose nor in any other service except as above stated.

It is immaterial whether said trucks are owned by the government; if they are under contract by the government, the government has acquired a quasi proprietary right in them and their use, and these trucks and their destination are under the absolute control of the government.

These trucks are engaged in an exclusive service to the federal government, which service is in the sphere of the police power of the sovereign government. The police powers of the government have as high dignity as the military powers. If the government were engaged in transporting troops under the same circumstances, it is quite obvious that the police powers of the State of Montana could not obstruct such transportation.

These trucks in question are carrying fire-fighters to quell a fire and save destruction of property within the state and they are acting in a dire emergency, and the exercise of police power of the sovereign in an emergency cannot be obstructed. A delay or an obstruction of the orderly transportation of these fire-fighters may cause untold damages, and the rapid transit of these men and equipment is imperative. The trucks are acting exclusively under the sovereign arm of the government; the government is the directing hand.

The federal government has the right to discharge its Constitutional functions in the exercise of its police power regardless of said regulations because the government is exercising its sovereign powers.

Opinion No. 108

Automobile License—Federal Government—Forest Fire Fighters.

HELD: Trucks and automobiles privately owned and operated by individuals, under contract with the Federal Government in transporting men and supplies for the purpose of fighting fires within the State of Montana, are not required to have State License for such, providing they have licenses from their own state.

May 22, 1937.

Mr. Evan W. Kelly
Regional Forester
Federal Building
Missoula, Montana

Dear Sir:

You have submitted to this office the question as to whether or not the

Tennessee v. Davis, 100 U. S. 257;
Henderson v. Mayor, 92 U. S. 259.

It may be argued that the state is entitled to the revenue from the licenses upon these trucks for the upkeep and construction of its roads. However, the federal government has some financial interest in many of these roads. The government has appropriated vast sums of money to the states in the aid of the construction of these roads. The revenue that the county would receive from the licensing of these trucks would be uncertain and comparatively insignificant, depending upon the fire conditions that may prevail, and the amount of money so received, in comparison with the damages wrought by said fire, may be quite trivial, and a delay of even a few minutes in getting these men to the fire may create many times greater a loss to the state than the amount of revenue so received.

The court said in the case of Johnson v. Maryland, 254 United States 51, at page 55:

“Here the question is whether the state can interrupt the acts of the general government itself. With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the State's inability to interfere has been regarded as established since *McCulloch v. Maryland*, 4 Wheat. 316. The decision in that case was not put upon any consideration of degree but upon the entire absence of power on the part of the States to touch, in that way at least, the instrumentalities of the United States; 4 Wheat, 429, 430; and that is the law today.”

In the case of *Ohio v. Thomas*, 173 U. S. 276, the court held that a federal officer is not subject to the jurisdiction of the state in regard to those very matters of administration which are approved by federal authority.

Our views, as herein stated, draw a definite distinction between individuals operating their own trucks in connection with public work of the federal government in the State of Montana, and the situation herein involved, as the services rendered in the former do not involve a police function of the Federal Government.