

Held: Motor vehicles owned by the federal government or one of its instrumentalities, operated over the highways of the state, are not exempt from statutory requirement for registration and payment of license fees, when operated under contract or lease specifically providing the lessee or contractor shall procure at its own cost all licenses and permits necessary for the use and operation of the motor vehicle.

June 7, 1945.

Mr. John E. Henry
Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Mr. Henry.

You have submitted to me a copy of agreement of lease between the Defense Plant Corporation, created by Reconstruction Finance Corporation, to aid the government of the United States in its national defense program, and the Consolidated Freightways, Inc., a private corporation and common carrier operating under interstate commerce commission certificate. You have asked my opinion whether the motor vehicles used and operated by this corporation under the terms of this lease must be registered in this state and license fees paid therefor.

Under the terms of the lease, the Consolidated Freightways acquires by purchase certain automotive equipment. This equipment is acquired in the name of the Defense Corporation. The equipment is then leased to the Freightways and used and operated by it in the transportation of military supplies and general dry freight and commodities for ultimate use by the government or by suppliers of the government in the states of Montana, Washington, Idaho, Oregon, California, Utah and Nevada in the interest of the national defense program. The lessee pays to the Defense Corporation certain stipulated rental for the use of such equipment. There is no provision in the lease that this equipment is or must be used exclusively for the transportation of governmental property, except as provided in paragraph eighteen as follows:

"Eighteen. Lessee agrees that it will not, without the prior written consent of Defense Corporation, use

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the equipment, or any item thereof, for any purpose except for the transportation of military supplies and general dry freight and commodities in the ordinary course of its business but also agrees that it will give preference to the Government and suppliers of the Government in the transportation of such military supplies and general dry freight and commodities. Notwithstanding any other provision contained in this agreement, Lessee also agrees that it will make such use of the equipment, or any item thereof, as Defense Corporation may, from time to time, request or direct."

Section 1759.5, Revised Codes of Montana, 1935, as amended, provides in part as follows:

"Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicles shall have been properly registered . . ."

Section 1760, Revised Codes of Montana, 1935, as amended, provides for the registration of all motor vehicles and the fees therefor, and contains the following provisions:

"The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semi-trailers **owned or controlled by the United States of America**, or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, trailers and semi-trailers." (Emphasis mine.)

The question then arises whether the motor vehicles used and operated by the Consolidated Freightways Corporation under the terms and provisions of the lease agreement are subject to registration and payment of fees, as provided by Section 1760, *supra*. It will be noted the exemption applies to motor vehicles "owned or controlled by the United States of America . . ."

This exemption is based upon the broad and well recognized principle expressed many times by the United States Supreme Court that a state may not tax the federal government or its instrumentalities, or do ought which

would directly interfere with its lawful operations. (*McCulloch v. Maryland*, 17 U. S. (4 Wheat.) 316 L. Ed. 579, *Osborn v. Bank of United States*, 18 U. S. (9 Wheat) 738, 6 L. Ed. 204, *State v. Wiles*, 116 Wash. 387, 199 Pac. 749.)

The statutory requirement for registration of motor vehicles is for the purpose of identification so the laws regulating the use and operation of the vehicle and the use of the highways may be more easily administered. The license fee required for registration is for the purpose of defraying the cost of regulation as well as the maintenance of the highways. Both purposes have been held by our Supreme Court to be within the powers of the legislature. (*Wheir v. Dye*, 73 Pac. (2d) 209, 105 Mont. 347.)

The evident reason for exempting the federal government from the payment of the fee was inasmuch as the federal government contributes to the building of the highways, it should not be charged for the use of the same. However, that reason can apply only to vehicles owned or operated exclusively by the federal government, or its agents or instrumentalities.

The motor vehicles here in question, while under the terms of the lease are owned by the federal agency, are nevertheless operated exclusively by the Consolidated Freightways, a private corporation. Furthermore, under the terms of the lease, the lessee has an option to purchase the motor vehicles under terms therein specified.

In the case of *State v. Wiles*, 116 Wash. 387, 199 Pac. 749, the defendant had a contract with the federal government to carry mail in the City of Seattle. The terms of the contract were very similar to those in the agreement here in question, except in that case the defendant owned the vehicles. In the cited case, defendant was convicted for operating a motor vehicle without having a license therefor. The act involved provided an exemption of "all motor vehicles owned by the United States government and used exclusively in its service." Defendant claimed exemption under this statute on the ground he was an instrumentality of the federal government, and inasmuch as the latter could not be charged for the license if it owned the trucks, he was likewise exempt. The state contended, on the other hand, the tax was

imposed on the right to operate a motor vehicle on the public highways of the state and not a tax imposed on the right to carry the mails; the immunity of the federal government from state taxation is not negotiable to the extent that it can transfer that immunity to every person who contracts with it to do any act for the furtherance of governmental business; the contract between an individual and the federal government does not render the former an essential governmental agent, and confer on him freedom from state control. The question of ownership of the vehicles was not considered by the court in its decision.

In upholding the conviction, the court reviewed the numerous decisions of state and federal courts holding the state may not directly tax the property of the federal government, nor the instrumentalities which it uses to discharge any of its constitutional functions, nor by taxation materially interfere with the due, expeditious and orderly procedure of that government, while in the exercise of its constitutional powers, held that those cases were not applicable to the facts in the case before the court. The court said:

"But the case at bar cannot come within the scope or spirit of those decisions. Here there is no effort to tax the business of carrying the mail. The appellant is not a direct instrumentality of the government; he is a personal contractor, doing certain work for the government, at a fixed compensation. In no sense is he the representative or agent of the government nor an integral part of it."

And the court quoted with approval from the case of *Fidelity & Deposit Co. v. Commonwealth of Penn.*, 240 U. S. 319:

"But mere contracts between private corporations and the United States do not necessarily render the former essential governmental agencies and confer freedom from state control."

In the contract here considered, it is provided in paragraphs sixteen and seventeen the lessee must pay all taxes, assessments, fines and penalties imposed on the motor vehicles, or with respect to the operation thereof, and to comply with all applicable federal,

state, municipal and local laws, rules and regulations. The contract further specifically provides:

"Lessee also agrees that it will procure and maintain, at its own cost, all licenses and permits necessary for the use and operation of the equipment and further agrees to pay all license fees and other fees, charges and expenses of whatsoever nature and kind in connection with the use and operation of the equipment."

From a consideration of the pertinent facts in this case and especially the terms of the contract, it seems clear this case comes squarely within the reasoning of the court in the *Wiles* case, *supra*, and the following language of the Supreme Court of Washington in that case is pertinent and applicable to the facts here:

". . . There is nothing in appellants' contract which indicates that the government intended to pass its immunities on to him. Under these circumstances, it should be presumed that it was the intention that he should be subject to the general laws of the state."

It is therefore my opinion motor vehicles owned by the federal government or one of its instrumentalities, operated over the highways of the state, are not exempt from statutory requirement for registration and payment of license fees, when operated under contract or lease specifically providing the lessee or contractor shall procure at its own cost all licenses and permits necessary for the use and operation of the motor vehicle.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General