

VOLUME 31

Opinion No. 7

AUTOMOBILES; Owned by military personnel—LICENSES; Power of state to license—SECTION 53-114(3), R.C.M. 1947; 50 U.S.C. App. 574.

HELD: The county treasurer cannot register an automobile or issue license plates therefor until the personal property taxes on the automobile have been paid. It should be noted that 50 U.S.C. App., section 574 does not prevent military personnel from procuring Montana license plates should they so desire provided their automobiles are registered and the taxes thereon paid in accordance with Montana law.

September 9, 1965

Mr. Gene B. Daly
Cascade County Attorney
Cascade County Courthouse
Great Falls, Montana

Dear Mr. Daly:

You have requested my opinion on the following questions:

1. Does 50 U.S.C. App., section 574 exempt automobiles owned by U. S. military personnel stationed in Montana from Montana's taxing and licensing provisions when such auto-

mobiles are used in transporting military personnel or their spouses to and from non-military jobs?

2. May U. S. military personnel procure Montana licenses for their automobiles without paying personal property taxes on such automobiles?

In essence, 50 U.S.C. App., section 574 frees the income and property of military personnel from any form of taxation by the state in which such personnel are stationed. There is however a proviso in this section which permits the taxation "of personal property used in or arising from a trade or business." But automobiles owned by military personnel and used merely to transport them or their spouses to and from non-military jobs are not "property used in or arising from a trade or business." **Christian v. Strange**, 96 Ariz. 106, 392 P. 2d 575 (1964). Therefore, neither the state of Montana nor any of its political subdivisions may tax or license such automobiles.

With regard to your second question it is my opinion that military personnel may not procure Montana license plates for their automobiles without paying the personal property tax thereon. Section 53-114(3), Revised Codes of Montana, 1947, provides in part:

The applicant (for registration of automobile) shall, upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed against said vehicle for the current year of registration * * * **before the application for registration or reregistration may be accepted by the county treasurer.** (Emphasis supplied.)

The county treasurer cannot therefore register an automobile or issue license plates therefor until the personal property taxes on the automobile have been paid. It should be noted that 50 U.S.C. App., section 574 does not prevent military personnel from procuring Montana license plates should they so desire provided their automobiles are registered and the taxes thereon paid in accordance with Montana law.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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