



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

August 6, 1986

The Honorable Thomas E. White
Prosecuting Attorney of
Marshall County
Marshall County Courthouse
Moundsville, West Virginia 26041

Dear Mr. White:

We are in receipt of your letter dated June 16, 1986, requesting an opinion from this office regarding the refusal of the West Virginia Penitentiary and the Mound Museum to pay the public utility tax imposed by the City of Moundsville. More precisely, your letter referred us to a request made by the Moundsville city attorney which states, in part:

"The City of Moundsville charges - by ordinance - a public utilities tax, pursuant to Chapter 8, Article 13, Section 5a of the West Virginia Code. * * * As I understand the situation, the State of West Virginia, by and through the respective agencies controlling the West Virginia Penitentiary property and the Mound Museum property located in the City of Moundsville have refused to pay this charge. Therefore, the question is simply whether the State of West Virginia is responsible for payment of said public utilities tax * * *."

Chapter 8, Article 13, Section 5a, of the West Virginia Code of 1931, as amended, gives a municipality the "plenary power and authority to levy and collect an excise tax on the privilege of purchasing, using or consuming * * * public utility services * * *." In addition to this grant of power, the statute also requires that any "ordinance imposing such tax shall require the collection thereof uniformly from all purchasers and consumers of all such services * * *." (Emphasis added.)

The agencies which control the West Virginia Penitentiary and the Mound Museum properties claim not to be responsible for the Moundsville public utility tax. Your letter did not state what grounds the agencies' refusal to pay said tax is based upon, though I presume it to be based in some way on the doctrine of sovereign immunity.

The general rule on taxation of state property, as set out in 84 C.J.S. Taxation § 213, is that:

"[T]axes may not be imposed by a state on its own governmental agencies or instrumentalities, or on those of its municipal corporations, nor may taxes be imposed by a municipality on the agencies or instrumentalities of a state, unless a statute specifically renders them subject to tax. * * *" (Emphasis added.) (Footnote omitted.)

This rule is echoed at 64 C.J.S. Municipal Corporations § 2015:

"[I]n the absence of consent, ordinarily a municipality may not tax * * * the state, [or] agencies of the state * * *."

The reasoning behind this rule is clear. Municipalities, having no inherent power to tax and no element of sovereignty, act merely as agents or arms of the state. To allow an agent of the state to tax the state would create a situation where:

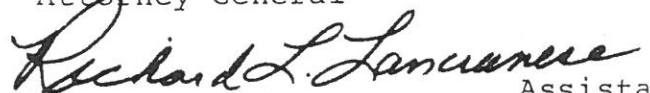
"it would render necessary new taxes to meet the demand of this tax, and thus the public would be taxing itself in order to raise money to pay over to itself, and no one would be benefited * * *." 2 Cooley, Taxation 1312 (4th ed. 1924).

While W. Va. Code § 8-13-5a does give a municipality the power to levy an excise tax on the users of public utility services, it does not specifically allow for the taxation of the state or any of its agencies. Therefore, it is the opinion of this office that the agencies which control the West Virginia Penitentiary and Mound Museum properties are not liable to the City of Moundsville for its public utility tax.

Very truly yours,

Charles G. Brown
Attorney General

By



Assistant

Richard L. Lancianese