



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

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Charles F. Dodrill
City Attorney
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City Hall
Post Office Box 1659
Huntington, West Virginia 25717

Dear Mr. Dodrill:

We are in receipt of your letter of November 5, 1986, requesting an opinion as to whether an individual engaged in the business of contracting would be subject to the registration ordinance passed by the City Council on August 25, 1986, and approved by Mayor Nelson on August 26, 1986.

Said ordinance reads, in pertinent part, as follows:

"(1) No person, corporation, partnership or firm engaging in business shall engage in that business within the City of Huntington without first registering with the Finance Director of the City and providing the following information:

* * *

"(2) There shall be assessed a Five Dollars (\$5.00) fee payable to the City for each person, corporation, partnership or firm registering under this section."

In answering your question, we look first to Article X, Section 9, of the West Virginia Constitution.

"The legislature may, by law, authorize the corporate authorities of cities, towns and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same."

By reason of the above-quoted constitutional provision, municipalities have no inherent power to impose taxes. That authority must be found either in the municipal charter as ratified by the Legislature, or in a specific provision of the West Virginia Code. In that regard, one is directed to W. Va. Code § 8-13-1 et seq.

It has come to our attention that the City of Huntington is presently imposing a business and occupation tax under the provisions of Code 8-13-5 and a license tax under Code 8-13-4, and thus would be precluded from imposing an additional tax under either of these sections. It is clear that the proposed business registration tax cannot be considered a business and occupation tax, nor could it be considered a license tax for purposes of Code 8-13-4. The license tax refers to a license to practice a profession or trade, or to engage in other business activities for which the state requires a license or required a license under the old licensing statutes (Code 11-12-1 et seq. and Code 11-13A-1 et seq.) in effect on January 1, 1970. Those engaged in the business activity of contracting are not subject to municipal license taxes.

The business registration ordinance appears to be in the form of the West Virginia Business Registration Tax, which is set forth in Code 11-12-1 et seq. Specifically, Code 11-12-3 provides:

"No person shall, without a business registration certificate, engage in or prosecute, in the state of West Virginia, any business activity without first obtaining a business registration certificate from the tax commissioner of the state of West Virginia. * * * "

The question as to whether a city is authorized to impose a registration tax was addressed in 54 Ops. Att'y Gen. 3 [1970]. In the said opinion it was determined that a municipality had no authority to, and could not legally, impose a municipal franchise tax, either in addition to, or in place of, a municipal license tax.

While the City of Huntington may not impose a municipal franchise tax, this does not preclude it from imposing a requirement to register.

Code 8-12-2 provides in pertinent part:

"[A]ny city shall have plenary power and authority by charter provision * * * or by ordinance not inconsistent or in conflict with such Constitution, other provisions of this chapter, other general law or any existing charter, to provide for the government, regulation and control of the city's municipal affairs, including, but not limited to, the following:

* * *

"The levy, assessment, collection and administration of such taxes and such special assessments for benefits conferred, as have been or may be specifically authorized by the legislature;

* * *

"The government, protection, order, conduct, safety and health of persons or property therein;

"The adoption and enforcement of local police, sanitary and other similar regulations; and

"The imposition and enforcement of penalties for the violation of any of the provisions of its charter or of any of its ordinances."

By virtue of the foregoing, there is authority to impose a registration requirement and to impose penalties for violation of said provision. However, as previously discussed, a municipality is not authorized to impose a tax or fee to be paid for such registration.

Very truly yours,

CHARLES G. BROWN
Attorney General

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MARIA FAKADEJ