

**Note from the Attorney General's Office:**

1937 Op. Att'y Gen. No. 37-1283 was overruled by  
1983 Op. Att'y Gen. No. 83-086.

1283.

AMERICAN NATIONAL RED CROSS—NOT SUCH AGENCY OF FEDERAL GOVERNMENT AS TO BE EXEMPT—EXCISE TAXES ON LIQUID FUEL—MAY NOT BE MADE, WHEN.

*SYLLABUS:*

1. *The American National Red Cross is not such an agency of the United States Government as would entitle it to claim exemption or claim refund for excise taxes paid on purchases of motor vehicle fuel and liquid fuel made by the Society, in this state.*

2. *There is no authority for the Tax Commission of Ohio to make refund to the American National Red Cross, of motor vehicle fuel tax or liquid fuel tax paid by such society on purchases of these items made in this state, because such purchases of motor vehicle fuel or liquid fuel by the American National Red Cross in this state are not purchases by the "United States Government or any of its agencies", as that term is used in Sections 5527, 5541 and 5542-2 of the General Code of Ohio.*

COLUMBUS, OHIO, October 8, 1937.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your letter of recent date, which reads as follows:

"Section 5527 of the General Code of Ohio, contains a paragraph under 'Exemptions' which reads:

'The sale of motor vehicle fuel to the United States Government or any of its agencies.'

Will you kindly furnish this Commission with a formal opinion as to whether or not the American Red Cross is an agency of the federal government, and exempt from the motor vehicle and liquid fuel taxes?"

Section 5527, General Code, effective September 2, 1935, provides in part, as follows:

"For the purpose of providing revenue for maintaining the state highway system \* \*, an excise tax is hereby imposed on all dealers in motor vehicle fuel upon the use, distribution or sale within the state by them of motor vehicle fuel at the rate of one and one-half cents (1½c) per gallon so used, dis-

tributed or sold, to be computed in the manner hereinafter set forth; provided, however, that no tax is hereby imposed upon or with respect to the following transactions:

\* \* \*

\* \* \*

\* \* \*

(d) The sale of motor vehicle fuel to the United States government *or any of its agencies*; \* \* \* (Italics the writer's.)

In your inquiry you have quoted exemption (d), of Section 5527, General Code, as it read previous to the amendment of said section by the 92nd General Assembly, effective August 23, 1937. On that date exemption (d) was amended to read as follows:

“The sale of motor vehicle fuel to the United States Government or any of its agencies, except such as may be permitted by it \* \* \*”.

It should also be noted that Section 5541, General Code, effective July 22, 1933, levies an additional excise tax of 1½c per gallon on motor vehicle fuel used, sold or distributed in this state. It applies,

“\* \* subject to specific exemptions \* \* in exactly the same manner as is provided in Section 5527 to 5536-1, both inclusive, of the General Code; and all of the provisions contained in said sections \* \* relating to motor vehicle fuel excise taxes shall be, and same hereby are reenacted and incorporated as if specifically set forth herein; which tax shall be in addition to the tax imposed under Section 5527 to 5536-1, of the General Code.”

Section 5542-2, of the General Code, effective December 17, 1935, levies an excise tax on all dealers in liquid fuel sold in this State at the rate of 1c per gallon. Subsection (c) of this section, as originally enacted, specifically exempted “the sale of liquid fuel to the United States government or any of its agencies.” This section was amended by the 92nd General Assembly, effective August 23, 1937, so that exemption (c) now reads as follows:

“The sale of liquid fuel to the United States government or any of its agencies, except such as may be permitted by it \* \*.”

However, none of these amendments materially change or affect the question at issue in this opinion but are given only to show the changes in the law.

I understand the question which you desire answered is whether or not the American National Red Cross is such an agency of the United States Government as will entitle it to claim exemption from the application of the motor vehicle and liquid fuel taxes levied under the above sections of the General Code.

The American National Red Cross is incorporated under the authority provided by Title 36, Chapter 1, of the Code of Laws of the United States of America; the date of its incorporation was January 5, 1905. The purposes of the corporation are set forth in Title 36, and include the following:

“(5) And to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, *floods*, and other great international calamities, and to devise and carry on measures for preventing the same.” (Italics, the writer’s.)

The governing body of the American National Red Cross, as set forth in Title 36, *supra*, is composed of a Central Committee numbering eighteen persons. In the first instance six members of this Central Committee were appointed by the incorporators named in the Act, and the other twelve by the President of the United States, one of whom the President was required to designate to act as Chairman of the Committee. After six or more states properly organized Red Cross Societies the Central Committee of eighteen members was then required to be changed, under Title 36, *supra*, so that six members of the Committee were appointed by the incorporators, six by the representatives of the various state and territorial societies, and six by the President of the United States. The President was authorized to appoint one of his appointees as Chairman of the Central Committee. The presidential appointees were required to include one each from the Departments of State, War, Navy, Treasury and Justice. Title 36, *supra*, further authorizes the President, upon death, resignation or vacancy occurring in the position of chairmanship or in the membership of the Central Committee to immediately fill such vacancy by another appointment. In addition to the above, the Central Committee, after its appointment, had power to appoint, and did appoint from its own members, an executive committee, composed of nine members, five of whom shall be a quorum, who, when the Central Committee is not in session, shall have and exercise all the powers delegated by Title 36, *supra*, to the Central Committee.

Title 36, *supra*, further provides under Section 6, as follows:

“The American National Red Cross shall, as soon as practicable after the first day of July of each year, make and transmit to the Secretary of War, a report of its proceedings for the fiscal year ending June 30, next preceding, including a full, complete and itemized report of *receipts and expenditures* of whatever kind, which report shall be fully audited by the War Department, and a copy of such report shall be transmitted to Congress by the War Department.”

The only case that I have been able to find that throws any light on the possibility of the American National Red Cross being able to qualify as a possible governmental agency, is contained in the case of *American National Red Cross vs. Feltner Post, Inc.*, 86 Indiana Appellate, 709, 159 N. E., 771, decided by the Appellate Court of Indiana, January 27, 1928. In that case, the syllabus reads in part, as follows:

“Courts take judicial notice of regulations of governmental and *quasi governmental agencies*, and of provisions and charters to private corporations discharging public charitable functions.”

Also:

“Court takes judicial notice that American National Red Cross is corporation by Act Cong. Jan. 5, 1905 (36 USCA Sec. 1 et seq.), of its activities that it has authority to accept bequests for certain purposes, that it is required to organize subordinate agencies, and that county chapters thereof are its local agencies, through which it acts, and for which it is responsible.”

The Court, in rendering its decision in that case, stated:

“We therefore judicially know that appellant is a corporation by act of Congress, 2 Fed. Ann. (2nd Ed.) pp. 59-64 (36 USCA Sec. 1 et seq.) and that it functions in furnishing volunteer aid to the sick and wounded in time of war, in matters of voluntary relief, and in accord with the military and naval authorities as a medium of communication between the people of the United States and their armed forces, and ‘to continue and carry on a system of national and international relief in time of peace’ etc.; that it has authority to accept bequests for such purposes; that it is required for said purposes to organize subordinate agencies; and that the county chapters, such as the one here involved, are but the local agencies through which it acts and for which it acts and for which it is responsible.”

The only inference that I can draw from the decision of the Court in the Felzner Post, Inc. case, *supra*, is, that at best, the American National Red Cross is not more than a quasi-governmental agency, performing voluntary relief work in stricken areas of the country during times of great emergency, such as floods, etc.

It is true that the American National Red Cross is incorporated, and acts under authority granted by Congress. However, the American National Red Cross functions entirely from funds provided by voluntary contributions from the general public. There is no expenditure of government funds, raised by taxation in the carrying on of any of its work. In making his appeal for Red Cross contributions to the general public, as a result of the Ohio River Flood last January, the President of the United States made the following statement:

“The victims of this grave disaster are dependent upon the American Red Cross for food, shelter, fuel, medical care and warm clothing. I have instructed the various agencies of the Federal Government to cooperate to the fullest extent with the Red Cross authorities.

In order that the Red Cross may meet these immediate emergent needs and continue to care for these unfortunates until the waters have receded and they can be returned to their homes, it is imperative that a minimum relief fund of two million dollars be raised as speedily as possible. *We are looking to this great national relief agency to act as our representative in this emergency.* As President of the United States and as President of the American Red Cross, I am therefore urging all of our people to contribute promptly and most generously to this relief fund, so that adequate relief may be made instantly available for these thousands of our homeless and suffering fellow citizens.”

I am further informed by the Department of Justice of the United States, acting through the Assistant Solicitor General, that the American National Red Cross goes into the various states and cities to administer relief in emergencies only upon the request of, or with the sanction of the governor, mayor or other state or local officer interested.

From this review of the activities and functions of the American National Red Cross, I am unable to see where it is brought within the realm of classification as a government agency. The term “government” as defined in Bouvier’s Law Dictionary, Volume 2, is as follows:

“That institution or aggregate of institutions by which a state makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming a state.”

The same authority, in Volume 3, has defined the term “agency” to be:

“Agency is a relation between two or more persons, by which one party, usually called the agent or attorney, is authorized to do certain acts for, or in relation to the rights or property of, the other, who is denominated the particular complainant or employer.”

From these two foregoing definitives, it seems reasonable to presume that in order for the American National Red Cross to be classified as an agency of the United States Government, for purposes of exemption from the taxes herein levied, it is necessary that it be controlled by the government, and that it be authorized to act for and in behalf of the government, and be able to carry out governmental functions specifically delegated to it by authority of the government itself. However, such does not seem to be the case here, as the government has no immediate control over the functions of the American National Red Cross except to see that the receipts and expenditures of the Society properly balance, as per its annual report required to be filed with the War Department.

I have tried to analyze this question from every angle, and there being no cases available which could act as a precedent, in rendering my opinion relative to this matter, I am therefore lead to the conclusion that the American National Red Cross is not such an agency of the United States Government as would entitle it to claim exemption from the application of the motor vehicle or liquid fuel taxes to purchases of these items made by the Society in this state.

Therefore, in specific answer to your question it is my opinion:

1. The American National Red Cross is not *such* an agency of the United States Government as would entitle it to claim exemption or claim refund for excise taxes paid on purchases of motor vehicle fuel and liquid fuel made by the Society, in this state.

2. There is no authority for the Tax Commission of Ohio to make refund to the American National Red Cross, of motor vehicle fuel tax or liquid fuel tax paid by such society on purchases of these items made in this state, because such purchases of motor vehicle fuel or liquid fuel by the American National Red Cross in this state are not purchases by the “United States Government or any of its agencies”,

as that term is used in Sections 5527, 5541 and 5542-2 of the General Code of Ohio.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1284.

APPROVAL—BONDS OF AKRON CITY SCHOOL DISTRICT,  
SUMMIT COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, October 8, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Akron City School Dist., Summit  
County, Ohio, \$5,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated April 1, 1925. The transcript relative to this issue was approved by this office in an opinion rendered to the Auditor of State under date of January 27, 1932, being Opinion No. 3998.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1285.

APPROVAL—BONDS OF CITY OF TOLEDO, LUCAS COUNTY,  
OHIO, \$5,000.00.

COLUMBUS, OHIO, October 8, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of City of Toledo, Lucas County, Ohio,  
\$5,000.00.