

OPINION NO. 74-010

Syllabus:

1. A municipal corporation has no authority to exempt motorcycles, two-wheel recreational vehicles, and house or camping trailers from a permissive motor vehicle license tax, levied pursuant to R.C. 4504.06.

2. Where exemptions included in an ordinance levying a tax pursuant to R.C. 4504.06 are invalid for lack of authority, that part of the ordinance levying the tax is still operative and should be enforced.

To: C. Donald Curry, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, February 13, 1974

Your request for my opinion states the facts and poses the questions in the following language:

"I have a question with regard to Sec. 4504.06 of the Ohio Rev. Code, for which I respectfully request your opinion."

"This code provision became effective on October 18, 1969. It is entitled 'Municipal Corporation Procedure and Use of Permissive Tax Money.' In short, this code provision enables municipalities to levy an annual license tax on motor vehicles registered within their boundaries, if done so by proper legislation.

"This code provision identifies three (3) exemptions from the tax: 1) Ohio Rev. Code 4503.16, relating to government vehicles, 2) 4503.17, relating to School Buses and Post-Office Department Vehicles, 3) 4503.171, relating to Civil Air Patrol Vehicles.

"The Village of Lisbon, Ohio, by Ordinance No. 853, passed on February 28, 1972 (copy attached) levied the annual license tax pursuant to Ohio Rev. Code 4504.06. However, Lisbon allowed for exemption of Motorcycles, two-wheel recreational vehicles, and non-self-propelled trailers such as house trailers or camping trailers. Is this exemption valid? If it is invalid, is the ordinance entirely or partially invalid? Should we direct our deputy registrars to collect the tax on the vehicles which have been questionably exempted?

The right of a municipality to impose this permissive tax on motor vehicles registered within such municipality is contained in R.C. 4504.06 which provides as follows:

"For the purpose of paying the costs and expenses of enforcing and administering the tax provided for in this section; and for planning, constructing, improving, maintaining, and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the municipal corporation's portion of the costs and expenses of cooperating with the department of highways in the planning, improvement, and construction of state highways; paying the municipal corporation's portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads and streets; paying any costs apportioned to the municipal corporation under section 4907.47 of the Revised Code; paying debt service charges on notes or bonds of the municipal corporation issued for such purposes; purchasing, erecting, and maintaining street and traffic signs and markers; purchasing, erecting and maintaining traffic lights and signals; and to supplement revenue already available for such purposes, the legislative authority of any municipal corporation on or after June 30, 1968 may by proper legislation levy an annual license tax, in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads or highways. Such tax shall be at the rate of five dollars per motor vehicle on all motor vehicles the district of registration of which, as defined in section 4503.10 of the Revised Code, is in the municipal corporation levying the tax and which are not subject to a county motor vehicle license tax previously levied by a resolution adopted pursuant to section 4504.02 of the Revised Code. Such tax shall be in addition to the taxes at the rates specified in sections 4503.04 and 4503.16 of the Revised Code, subject, to quarterly reductions in the manner provided in section 4503.13 of the Revised Code and the exemptions provided in sections 4501.101 [4503.10.1], 4503.16, 4503.17, and 4503.171 of the Revised Code.

"No municipal corporation shall enact any ordinance, resolution, or other measure levying a tax pursuant to this section on any motor vehicle registration which would be subject to a resolution previously adopted levying a county motor vehicle license tax where such resolution has not become effective solely because of the filing of a referendum petition pursuant to sections 350.31 to 305.41, inclusive, of the Revised Code or because the thirty-day period following adoption of the resolution has not expired.

"No ordinance, resolution, or other measure levying a municipal motor vehicle license tax shall be enacted as an emergency measure under section 731.30 of the Revised Code or pursuant to the charter of any municipal corporation and each such ordinance, resolution, or other measure

is subject to a referendum as provided in sections 731.29 to 731.41, inclusive, of the Revised Code or by the charter of the municipal corporation."
(Emphasis added.)

A municipal corporation, in levying a tax pursuant to authority granted by statute, must proceed in the method and manner prescribed in that statute, and its authority and discretion to levy the tax may be limited either expressly or by implication in the statute. Firestone v. City of Cambridge, 113 Ohio St. 57 (1925); State ex rel. Attorney General v. Toledo, 48 Ohio St. 112, 132 (1891).

R.C. 4504.06 provides that any tax imposed pursuant to that Section "shall be on all motor vehicles" subject to certain statutory exemptions. In statutory construction the word "may" is to be construed as permissive, and the word "shall" is to be construed as mandatory, unless there appears a clear and unequivocal legislative intent that those words receive a construction other than their ordinary usage. Dorrian v. Scioto Conserv. Dist., 27 Ohio St. 2d 102 (1971). There is no authority in the statute for a municipal corporation to levy the tax on a narrower class of motor vehicles. It follows that if a municipality determines to levy a tax under R.C. 4504.06, it must be applied to all motor vehicles, subject to the statutory exemptions.

The definition of "motor vehicles", as used in this Section, can be found in R.C. 4501.01, which reads in pertinent part:

"(A) 'Vehicles' means everything on wheels or runners, except vehicles operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles belonging to any police department, municipal fire department, volunteer fire department, or salvage company organized under the laws of this state or used by such department or company in the discharge of its functions.

"(B) 'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less, threshing machinery, hay baling machinery, corn sheller, hammermill and agricultural tractors and machinery used in the production of horticultural, agricultural, and vegetable products.

From the foregoing, motorcycles, two-wheel recreational vehicles, and non-self propelled trailers are motor vehicles when they

are to be propelled or drawn by power other than muscular power and designed for or employed in general highway transportation. See Opinion No. 72-106, Opinions of the Attorney General for 1972. They are, therefore, necessarily subject to any tax levied pursuant to R.C. 4504.06.

This interpretation is consistent with the rule of expressio unius est exclusio alterius. That principle is described in Sutherland, Statutory Construction, Section 47.23 p. 123, as follows:

"As the maxim is applied to statutory interpretation, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions. 'When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted. Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions, that mode must be followed and none other, and such parties only may act.'

* * * * *

"The maxim operates as a double negative to produce the opposite of its usual exclusionary effect in the case of exceptions, provisos, savings clauses or other negative provisions. The enumeration of exclusions from the operation of a statute indicates that it should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed."

See also State ex rel Boda v. Brown, 157 Ohio St. 368, 372 (1952); Akron Transportation Co. v. Glander, 155 Ohio St. 471, 476-480 (1951).

My predecessor, in Opinion No. 68-127, Opinions of the Attorney General for 1968, did in fact recognize an additional exemption in the case of servicemen, who are non-residents of the state. His conclusion was based on the case of California v. Buzard, 382 U.S. 385 (1965), in which the United States Supreme Court rules that the Soldiers' and Sailors Civil Relief Act, 50 U.S.C., Section 574, exempts a non-resident serviceman from state personal property taxes, and also from having to pay motor vehicle licenses, fees, or excises, provided that the license fee or excise required by his home state, if any, has been paid.

However, this was the case of a federal statute which pre-empted a state law. On the other hand, the situation in question involves the construction to be given a state statute, granting municipal corporations the authority to levy a motor vehicle license tax. Application of the principle of expressio exclusio alterius is a proper course of action in determining the legislative intent. I must, therefore, conclude that there

is no authority for a municipal corporation, which levies a tax pursuant to R.C. 4504.06, to provide an exemption for motorcycles, two-wheel recreational vehicles, and non-self propelled trailers, such as house trailers or camping trailers.

Your second question concerns the effect of the invalidity of the exemption on the ordinance levying the tax. It is a general rule of statutory construction that where an ordinance consists of severable and independent parts, having no general influence over each other, and a part is valid and a part is void, the part which is valid is operative and will be carried into effect. City of Columbus v. Guthmann, 175 Ohio St. 282 (1963); City of Piqua v. Zimmerlin, 35 Ohio St. 507 (1880).

The levy in question is essentially a revenue measure. Opinion No. 68-127, *supra*. Thus, the invalidation of certain exemptions set out in the ordinance would not defeat the purpose, or disrupt the operation, of the levy and the other exemptions. Nor do the invalid exemptions appear to be of such importance that the council would not have passed the ordinance with this part omitted. Sterling v. City of Bowling Green, 5 Ohio C.C.R. (n.s.) 217 (1904). I am, therefore, of the opinion that the levy continues in effect and should be enforced.

In specific answer to your questions it is my opinion, and you are so advised that:

1. A municipal corporation has no authority to exempt motorcycles, two-wheel recreational vehicles, and house or camping trailers from a permissive motor vehicle license tax, levied pursuant to R.C. 4504.06.

2. Where exemptions included in an ordinance levying a tax pursuant to R.C. 4504.06 are invalid for lack of authority, that part of the ordinance levying the tax is still operative and should be enforced.