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PORT AUTHORITY—IS A POLITICAL SUBDIVISION OF THE STATE WITHIN MEANING OF §§ 4582., 5739.02 (B) (1) R.C.

SYLLABUS:

A port authority created as provided in Chapter 4582., Revised Code, is a "political subdivision" of the state within the meaning of division (B) (1) of Section 5739.02, Revised Code.

Columbus, Ohio, February 22, 1960

Hon. Stanley J. Bowers, Tax Commissioner
Department of Taxation, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Under the provisions of Section 5739.02 of the Revised Code the Ohio sales tax does not apply to 'sales to the state or any of its political subdivisions.'

"I respectfully request your opinion as to whether a Port Authority created pursuant to the provisions of Chapter 4582. of the Revised Code qualifies as a political subdivision of the state so that sales to it would be exempted from sales tax under the terms of 5739.02, Revised Code."

It is readily apparent that the definition of "subdivision" found in Section 5739.02, Revised Code, is limited as provided in that section to this term as used in particularly enumerated statutory provisions, which provisions do not include those of Section 5739.02, Revised Code. It is plain, too, as pointed out by Turner, J., in *Kinsey v. Bower*, 147 Ohio St., 66 at page 76, that the definition of "subdivision" found in the Uniform Tax Levy Law (Section 5705.01 *et seq.*, Revised Code,) has application only as the term is used therein.

In our own case, then, to paraphrase the language of Turner, J., in *Kinsey, supra*, there is no justification for departing from the ordinary meaning of the term "political subdivision" as used in Section 5739.02, Revised Code. Webster defines "subdivision" as "A part of a thing made by subdividing," and the term "political" as:

“* * * of or pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state * * *.”

A “political subdivision” of the state must, therefore, refer to (1) a limited geographical area within the state, (2) wherein a public agency is authorized by law to exercise some governmental function.

Section 4582.05, Revised Code, clearly provides for the territorial “subdivision” within which the governing body of a port authority may act, however it be created. Compare this provision with, for example, the Ohio Turnpike Act, Chapter 5537., Revised Code, which fails to relate the turnpike commission’s functions to any defined area or “subdivision” of the state. Hence, it was probably for this reason that it was thought necessary in that act to provide *specifically* for a tax exemption. See Section 5537.20, Revised Code.

The decision in *State, ex rel. McElroy v. Baron*, 169 Ohio St., 439, makes it clear that the courts will not question the legislative judgment that the creation and operation of a port authority will serve valid public purposes. Although the somewhat abbreviated opinion in the *McElroy case, supra*, does not too clearly disclose it, an examination of the briefs in that case will reveal that questions relative to the serving of private purposes, to the participation of “private enterprise,” and to the profit-making potential of these agencies, were fully and earnestly argued to the court. The court’s decision makes it clear, however, that these attributes are to be deemed merely incidental to the “primary purpose of the Port Authority,” and that that primary purpose is a public one.

As indicative of the probable legislative intent in providing the exemption in Section 5739.02, Revised Code, to “political subdivisions” we may note briefly what appears to be the legislative philosophy regarding exemptions from taxation. In *Zangerle v. Cleveland*, 145 Ohio St., 347, it was remarked by Bell, J., at pages 356 and 357:

“Public property used exclusively for any public purpose is exempt from taxation for two reasons: (1) It is purchased and maintained by public money derived from taxation and to tax such property would amount only to taking public money from one pocket and putting it into another, and (2) the product of the expenditure of tax money should not be made the subject of another tax.”

I consider it only reasonable that tax exemption statutes should be construed in harmony with the philosophy thus expressed; and such rule of reason appears to have the approval of the courts. See *In re Bond Hill-Roseland Hebrew School*, 151 Ohio St., 70 and *Carney v. Library*, 169 Ohio St., 65, 66.

It is contemplated, of course, that a port authority will be financially self-supporting, but it is provided in Section 4582.13, Revised Code, that any profit made will accrue to the treasury of its creator, the city or the county, or will be divided among them where two or more subdivisions join to create a port authority. In a financial sense, therefore, the port authority is the mere alter ego of its creator or creators; and both cities and counties are without question "political subdivisions" of the state. A tax on sales to a port authority would clearly diminish the potential surplus which could thus be paid over to the city or county concerned; and this is clearly the "taking of public money from one pocket and putting it into another."

Moreover, such tax would tend to create the necessity for the levy of a tax as provided in Section 4582.14, Revised Code; and the use of such tax proceeds to meet the sales tax levy on port authority purchases would have the same effect, and would amount also to the levy of a tax on the act of expending the proceeds of a tax.

Interesting or instructive as these considerations may be, however, I consider as controlling in any event (1) the circumstance that the General Assembly has failed to provide a statutory definition of "political subdivision" as used in Section 5739.02, Revised Code, (2) the consequent necessity of ascribing to this expression its ordinary meaning, that is to say, a territorial portion of the state within which a public agency is authorized to exercise essential governmental functions, and (3) the essential nature of a port authority, as disclosed by Chapter 4582., Revised Code, and as shown by the decision in *McElroy, supra*, as a public agency charged with the exercise of a governmental function within and for a territorial "subdivision" of the state.

It is accordingly my opinion and you are advised that a port authority created as provided in Chapter 4582., Revised Code, is a "political subdivision" of the state within the meaning of division (B) (1) of Section 5739.02, Revised Code.

Respectfully,

MARK McELROY
Attorney General