

OPINION NO. 86-042**Syllabus:**

1. Pursuant to R.C. 4503.16, the Registrar of Motor Vehicles must register without charge motor vehicles that are owned by the federal government or an agency thereof and that are used exclusively in the performance of the governmental or proprietary functions of the federal government or its agency. (1962 Op. Att'y Gen. No. 3140, p. 546; 1946 Op. Att'y Gen. No. 933, p. 319; 1943 Op. Att'y Gen. No. 6467, p. 594, approved and followed in part).
2. The American National Red Cross is an agency of the federal government so as to be eligible under R.C. 4503.16 to have motor vehicles that it owns and operates registered free of charge, provided that the vehicles are used exclusively in the performance of the functions of the Red Cross. (1920 Op. Att'y Gen. No. 1292, vol. I, p. 623, followed.)

To: William M. Denihan, Director, Department of Highway Safety, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1986

I have before me your request for an opinion on a question concerning motor vehicles that are owned and operated by the American National Red Cross. You have asked whether the

Registrar of Motor Vehicles must register such vehicles without charge.

R.C. Chapter 4503 sets forth a statutory scheme for the licensing and registration of motor vehicles. R.C. 4503.02 states: "An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways....Such tax...shall be paid to and collected by the registrar of motor vehicles or deputy registrar at the time of making application for registration." R.C. 4503.04 contains a schedule of rates of the taxes imposed by R.C. 4503.02, and R.C. 4503.10 contains requirements relating to registration. R.C. 4503.16 governs the registration of state and federal vehicles, stating, in part:

Title to motor vehicles acquired by the state or any of its political subdivisions, whether used for either governmental or proprietary functions, shall be registered. Motor vehicles owned by the federal government and loaned to the state or any of its political subdivisions for use in a federal program shall be registered in the name of the state or political subdivision without the presentation of a certificate of title or other evidence of ownership as required by section 4503.10 of the Revised Code, when the registrar is satisfied that the motor vehicles are on loan from the federal government and are being used exclusively in a federal program. Such vehicles that have been registered and that are used exclusively in the performance of the governmental or proprietary functions of the state or any political subdivision thereof shall not be subject to charge of any kind; but this provision does not exempt the operation of such vehicles from any other provision of Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4515., and 4517. of the Revised Code, and the penal laws relating to them.

The registrar of motor vehicles shall accept any application to register a motor vehicle owned by the federal government that may be made by any officer, department, or agent of such government.

The registrar shall issue permanent license plates for motor vehicles acquired by the state or any of its political subdivisions, or loaned to the state or any of its political subdivisions by the federal government for use in a federal program, which have been registered and that are used exclusively in the performance of the governmental or proprietary functions of the state or any political subdivision thereof, or are used exclusively in a federal program. The registrar shall also issue permanent license plates for all motor vehicles owned and registered by the federal government. Such permanent license plates if lost, stolen, or destroyed, shall be replaced gratis with another permanent number. (Emphasis added.)

R.C. 4503.16 requires the registration of "motor vehicles acquired by the state or any of its political subdivisions, whether used for either governmental or proprietary functions," and provides that vehicles so registered "that are used exclusively in the performance of the governmental or proprietary functions of the state or any political subdivision thereof shall not be subject to charge of any kind." An

earlier version of R.C. 4503.16 (then G.C. 6295) had provided for registration without charge for all "[p]ublicly owned and operated motor vehicles used exclusively for public purposes." See 1920 Op. Att'y Gen. No. 1292, vol. I, p. 623 at 623; 1920 Op. Att'y Gen. No. 962, vol. I, p. 121 at 122. See generally 1943 Op. Att'y Gen. No. 6467, p. 594 at 598. It was concluded that such language related "to motor vehicles owned by the nation, state or any of their legally constituted subdivisions." 1920 Op. No. 962 at 123 (quoted in 1920 Op. No. 1292 at 624). While the current version of R.C. 4503.16 does not state expressly that motor vehicles owned by the federal government or an agency thereof are exempt from registration charges, there is no indication that the amendments which have been made to that provision intended to eliminate the exemption granted to federally-owned vehicles. Rather, the conclusion that such vehicles remain exempt is supported by the history of R.C. 4503.16, and also by the fact that "state," as used in, inter alia, R.C. Chapter 4503, is defined to include "the territories and federal districts of the United States." R.C. 4501.01(Z).

My predecessor considered earlier versions of R.C. 4503.16 in 1943 Op. No. 6467 and stated, at 599-601:

In considering present Section 6295 [now R.C. 4503.16], it might appear at first blush that in the use of the word "state" it was intended to refer to those vehicles owned by the state of Ohio. But this cannot be the situation in view of the provisions of Section 6290, General Code [now R.C. 4501.01], which states in part that:

"Definition of terms, as used in this chapter and in the penal laws, except as otherwise provided:***

16. 'State' includes the territories and federal districts of the United States, and the provinces of the Dominion of Canada."

As I read this language, a vehicle owned by any one of the other states of the Union is entitled to registration without charge, provided it is used exclusively for public purposes. Likewise, vehicles owned by the several provinces that constitute the Dominion of Canada come within the provisions thereof. To say that the federal government--a union of all the sovereign states, created by the adoption of a federal constitution--is not within the purview of the statute seems to me to lead to an absurd conclusion. Legislation should never receive such a construction.

It is noteworthy that when Section 6295, supra, was enacted into its present form,¹ the General Assembly did not omit that provision thereof to the effect that an application to register a motor vehicle owned by the federal government should be accepted.

¹ The referenced amendment changed the language "[p]ublicly owned and operated motor vehicles" to "[m]otor vehicles, the title to which are in the state or any political subdivision thereof." See 1943 Op. Att'y Gen. No. 6467, p. 594, at 597-99.

This concluding paragraph of the section [the second paragraph of the portion of R.C. 4503.16 quoted above], standing alone, does not provide that such a vehicle shall be used exclusively for public purposes. Nor does it say that registration should be without charge. If it were not intended that a motor vehicle of the federal government should come within the exemption provision, then what purpose could have been served by permitting this concluding paragraph to remain in the section under consideration? Certainly it has some meaning. I must conclude, therefore, in the light of the legislation as it previously existed and as interpreted by my aforementioned predecessors, that motor vehicles owned by the federal government are within the purview of Section 6295...Such a construction permits the giving of effect to this last paragraph which would otherwise seem to be surplus language.

We might consider for a moment what would be the situation if it could be said that Section 6295...does not authorize the exempting of motor vehicles owned by the federal government. I think it is well established that the means or agencies selected by the federal government as necessary or convenient to the exercise of its functions cannot be subjected to the taxing power of the states. It seems likewise settled that the federal government cannot tax the agencies of a state, or the means necessary to the exercise of its sovereign functions. Any attempt to tax vehicles owned by the federal government would necessarily result in a deviation from these principles. I am of course aware of the fact that Section 6291, General Code, which provides in part that "An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state" is an excise rather than a property tax. See Calerdine v. Freiberg, 129 O.S. 453, wherein the court, at page 457, said:

"At the threshold of this discussion it is of importance to observe that there is no dispute as to the precise nature of this tax. Both the Court of Common Pleas and the Court of Appeals held it to be an excise rather than a property tax. Counsel have so considered it in their briefs and oral arguments. Clearly this is correct."

However, I cannot bring myself to the view that by the change in the wording of Section 6295, supra, it was thereby intended that the taxing power of this state should thus be extended to place what might be considered a burden upon the federal government in the exercise of its functions. But whether such a tax would or would not be a burden, I need not here decide. Suffice it to say that an effort to impose such a tax might be seriously doubted. (Emphasis and footnote added.)

See generally Bill Swad Leasing Co. v. State, 9 Ohio App. 3d 114, 458 N.E.2d 862 (Franklin County 1982).

1943 Op. No. 6467 stands for the proposition that motor vehicles owned by the federal government or an agency thereof

are eligible for exemption from registration charges.² That proposition was adopted and applied in 1946 Op. Att'y Gen. No. 933, p. 319, and 1962 Op. Att'y Gen. No. 3140, p. 546. I find that it is still a valid conclusion under R.C. 4503.16, as currently in effect. As noted in 1943 Op. No. 6467, the fact that R.C. 4503.16, as amended, has retained the requirement that the Registrar of Motor Vehicles "accept any application to register a motor vehicle owned by the federal government that may be made by any officer, department, or agent of such government" indicates that the amendments were not intended to eliminate federally-owned motor vehicles from the exemption provision. That conclusion is also supported by the fact that R.C. 4503.16 provides that the Registrar shall "issue permanent license plates for all motor vehicles owned and registered by the federal government," and replace them at no charge if they are lost, stolen, or destroyed. As was stated in 1962 Op. No. 3140, at 549:

In 1959 (128 O.L. 173), Section 4503.16, Revised Code, was amended to provide for the issuance of permanent plates to the state and federal government and the replacement of such plates free of charge when lost or destroyed. Thus, in providing for the issuance of permanent plates to federal vehicles the legislature has apparently recognized and adopted the construction placed on former Section 6295, General Code, now Section 4503.16, Revised Code, in Opinion No. 6467....

See also R.C. 4503.17 ("[w]hen the post-office department has the exclusive right and supervision of the use of a motor vehicle for a period of one year under contract by a United States civil service employee, the United States government shall be considered the owner of such vehicle and entitled to the registration thereof without charge").

In light of the language of R.C. 4503.16 and the interpretation which it has consistently been given,³ I conclude that motor vehicles owned by the federal government or an agency thereof that are used exclusively in the performance of governmental or proprietary functions of the federal

² 1943 Op. Att'y Gen. No. 6467, p. 594, states, in the first paragraph of the syllabus: "The federal government, or any agency thereof which is exercising governmental functions, is entitled to have a motor vehicle registered without charge under the provisions of Section 6295, General Code, provided such vehicle is publicly operated and used exclusively for public purposes."

³ When 1943 Op. Att'y Gen. No. 6467, p. 594 was written, G.C. 6295 (predecessor to R.C. 4503.16) stated that it applied to motor vehicles "used exclusively for public purposes." 1943 Op. No. 6467 at 597. R.C. 4503.16 now applies to motor vehicles that "are used exclusively in the performance of...governmental or proprietary functions." The language of my conclusion thus varies somewhat from that set forth in 1943 Op. No. 6467. See note 2, supra. See also 1946 Op. Att'y Gen. No. 933, p. 319 (discussing public purpose). The applicability of the provision to the federal government and its agencies has, however, been retained. See 1962 Op. Att'y Gen. No. 3140, p. 546.

government or its agency are not subject to registration charges.

I turn now to the question whether the American National Red Cross, created under 36 U.S.C. Chapter 1, is an agency of the federal government so as to be eligible under R.C. 4503.16 to have motor vehicles which it owns registered free of charge. In 1983 Op. Att'y Gen. No. 83-086, I concluded that the American National Red Cross and its local chapters are agencies of the United States for purposes of R.C. 5735.05(D), which provides for exemption from the motor vehicle fuel tax. My conclusion was based upon Department of Employment v. United States, 385 U.S. 355 (1966), which held that "the Red Cross is an instrumentality of the United States for purposes of immunity from state taxation levied on its operations, and that this immunity has not been waived by congressional enactment." 385 U.S. at 358. Department of Employment v. United States, quoted in Op. No. 83-086 at 2-340, states:

Although there is no simple test for ascertaining whether an institution is so closely related to governmental activity as to become a tax-immune instrumentality, the Red Cross is clearly such an instrumentality. See generally, Sturges, The Legal Status of the Red Cross, 56 Mich.L.Rev. 1 (1957). Congress chartered the present Red Cross in 1905, subjecting it to governmental supervision and to a regular financial audit by the Defense, then War, Department. 33 Stat. 599, as amended, 36 U.S.C. §1 et seq. Its principal officer is appointed by the President, who also appoints seven (all government officers) of the remaining 49 Governors. 33 Stat. 601, as amended, 36 U.S.C. §5. By statute and Executive Order there devolved upon the Red Cross the right and the obligation to meet this Nation's commitments under various Geneva Conventions, to perform a wide variety of functions indispensable to the workings of our Armed Forces around the globe, and to assist the Federal Government in providing disaster assistance to the States in time of need. Although its operations are financed primarily from voluntary private contributions, the Red Cross does receive substantial material assistance from the Federal Government. And time and time again, both the President and the Congress have recognized and acted in reliance upon the Red Cross' status virtually as an arm of the Government. In those respects in which the Red Cross differs from the usual government agency--e.g., in that its employees are not employees of the United States, and that government officials do not direct its everyday affairs--the Red Cross is like other institutions--e.g., national banks--whose status as tax-immune instrumentalities of the United States is beyond dispute.

385 U.S. at 358-60 (footnotes omitted). But cf. Irwin Memorial Blood Bank v. American National Red Cross, 640 F. 2d 1051 (9th Cir. 1981) (finding that, although the Red Cross is a close ally of the United States government, it was not intended to be included as an "agency" of the federal government for purposes of the Freedom of Information Act).

I believe that the analysis set forth in Op. No. 83-086 is applicable also to the question which you have raised. In

light of Department of Employment v. United States, I conclude that the American National Red Cross is an agency of the federal government so as to be eligible under R.C. 4503.16 to have motor vehicles which it owns registered free of charge.⁴ I note that this conclusion is consistent with that reached by one of my predecessors, under an earlier version of R.C. 4503.16, in 1920 Op. No. 1292 (syllabus):

The American National Red Cross is a body politic and corporate functioning as an agency of the government of the United States in times of peace as well as in times of war. The state registrar of automobiles should register motor vehicles owned by the American Red Cross without charge.

As noted in Op. No. 83-086 and suggested in the portion of 1943 Op. No. 6467 quoted above, the conclusion that the American National Red Cross is exempt from registration fees on vehicles that it owns might, if it were not reached as a matter of statutory interpretation, be compelled as a matter of constitutional law. See U.S. Const. art. VI, cl.2 (Supremacy Clause); Op. No. 83-086 at 2-340 ("[t]he Supremacy Clause has been interpreted as prohibiting the states from taxing the United States and its instrumentalities, unless the United States has expressly waived its immunity from state taxation" (citations omitted)).

You have inquired only about the registration of motor vehicles "owned and operated" by the American National Red Cross. I note that, under the express language of R.C. 4503.16, the right to have vehicles of the federal government or one of its agencies registered without charge extends only to vehicles "that are used exclusively in the performance of the governmental or proprietary functions" of the government or its agency. Thus, a motor vehicle which is used for any other purposes may not be registered without charge. See 1920 Op. No. 962 at 123 ("just the minute [a motor vehicle used by an agent of the post office department] is used for any other purpose aside from a strictly and exclusively governmental use, it has in all respects the same status as a privately owned and operated motor vehicle in so far as a license tax is concerned"). See generally 1943 Op. No. 6467.

⁴ I am aware that this conclusion may raise questions concerning the validity of 1962 Op. Att'y Gen. No. 3140, p. 546. Issued prior to the United States Supreme Court's decision in Department of Employment v. United States, 385 U.S. 355 (1966), 1962 Op. No. 3140 concluded that the Civil Air Patrol had a closer relationship with the federal government than did the American Red Cross, and that the Civil Air Patrol was not an agency, department, or office of the federal government for purposes of securing an exemption from the annual license tax on motor vehicles under R.C. 4503.16. 1962 Op. No. 3140 relied, in part, upon 1951 Op. Att'y Gen. No. 1019, p. 862, which was overruled by 1983 Op. Att'y Gen. No. 83-086. Since the issue of the applicability of R.C. 4503.16 to the Civil Air Patrol is not before me, I am not, at this time, considering that issue or the continuing validity of the conclusions adopted in 1962 Op. No. 3140.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Pursuant to R.C. 4503.16, the Registrar of Motor Vehicles must register without charge motor vehicles that are owned by the federal government or an agency thereof and that are used exclusively in the performance of the governmental or proprietary functions of the federal government or its agency. (1962 Op. Att'y Gen. No. 3140, p. 546; 1946 Op. Att'y Gen. No. 933, p. 319; 1943 Op. Att'y Gen. No. 6467, p. 594, approved and followed in part).
2. The American National Red Cross is an agency of the federal government so as to be eligible under R.C. 4503.16 to have motor vehicles that it owns and operates registered free of charge, provided that the vehicles are used exclusively in the performance of the functions of the Red Cross. (1920 Op. Att'y Gen. No. 1292, vol. I, p. 623, followed.)