

OPINION NO. 87-038

Syllabus:

Ownership of a watercraft by an Ohio chapter of the American National Red Cross constitutes ownership by the United States so that, pursuant to R.C. 1547.58(C), the watercraft is excepted from the numbering requirement of R.C. Chapter 1547 and is, as a result, not subject to payment of any registration fees.

To: Joseph J. Sommer, Director, Department of Natural Resources, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, June 4, 1987

I have before me your request for an opinion on the question whether ownership of a watercraft by an Ohio chapter of the American Red Cross constitutes ownership by the United States so that, pursuant to R.C. 1547.58, the watercraft is excepted from the numbering requirement of R.C. Chapter 1547 and is, as a result, not subject to payment of a prescribed registration fee. The numbering requirement referenced in your request is established by R.C. 1547.53, as follows: "Except as provided in section 1547.58 of the Revised Code, every watercraft operated on the waters in this state shall be numbered by this state." See also R.C. 1547.51 (the Division of Watercraft, within the Department of Natural Resources, "shall administer and enforce all laws relative to the...numbering...of watercraft operated on the waters in this state"). R.C. 1547.54 sets forth requirements for filing an application for a number and establishes annual fees for different classes of watercraft. See also 2 Ohio Admin. Code Chapter 1501:47-1. R.C. 1547.58 contains exceptions to the numbering requirement, including the following:

A watercraft shall not be required to have an Ohio number if it is:

...
(C) A watercraft whose owner is the United States, a state, or political subdivision thereof....

You have, thus, asked whether a watercraft owned by an Ohio chapter of the American Red Cross comes within the exception established by R.C. 1547.58(C).

I have had occasion to consider related questions in two prior opinions. In 1986 Op. Att'y Gen. No. 86-042 (syllabus, paragraph two), I concluded 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 that it owns and operates registered free of charge." In 1983 Op. Att'y Gen. No. 83-086 (syllabus), I concluded that the American National Red Cross "is an agency of the United States for

purposes of R.C. 5735.05(D), so that sales of motor vehicle fuel to the Red Cross are exempt from the motor vehicle fuel tax." In each of those opinions, I placed reliance 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." Id. at 358. Department of Employment v. United States, quoted in Op. No. 86-042 at 2-224 and 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 the Red Cross is a close ally of the United States government but is not an "agency" of the federal government for purposes of the Freedom of Information Act).

In light of the language of Department of Employment v. United States and in concurrence with the analysis set forth in Op. No. 86-042 and Op. No. 83-086, I conclude that the American Red Cross is an instrumentality of the United States for purposes of Ohio's provisions governing the numbering of watercraft. While R.C. 1547.58(C) speaks only of the "United States" and does not mention agencies or instrumentalities thereof, it is implicit that its provisions apply to agencies and instrumentalities of the federal government that perform the functions of the United States. See generally Op. No. 86-042 (construing exemption from motor vehicle registration

fee as applying to motor vehicles owned by the federal government and also to motor vehicles owned by agencies of the federal government, including, in particular, the American National Red Cross). As a result, a watercraft owned by the American Red Cross is, pursuant to R.C. 1547.58, exempt from the requirement that it have an Ohio number. The American Red Cross is, therefore, exempt from the requirement of R.C. 1547.54 that "[t]he owner of every watercraft requiring numbering by this state shall file an application for a number" and pay the appropriate fees. See also R.C. 1547.01(F) (defining "owner," for purposes of R.C. Chapter 1547, as including any "person" who claims lawful possession of a watercraft by virtue of legal title or equitable interest) and R.C. 1547.01(E) (defining "person" to include "any individual, firm, partnership, corporation, company, association, or body politic, except the United States and this state and [to include] any agent, trustee, executor, receiver, assignee, or other representative thereof" (emphasis added)).

I note that your question relates specifically to Ohio chapters of the American Red Cross, rather than to the national body. This fact does not affect the analysis set forth above, since the American National Red Cross and its local chapters constitute the same legal entity. As was stated in Op. No. 83-086, n. 1 at 2-339:

In your request, you have asked whether sales of motor vehicle fuel to the local chapters of the Red Cross, as well as to the American National Red Cross, are exempt from taxation. 36 U.S.C. §4a states in part: "The chapters of the American National Red Cross shall be the local units of the corporation within the States and Territories of the United States." This statement is reiterated in §9.01 of the Bylaws of the American National Red Cross, which further provides that "[c]hapters shall not be constituted as separate legal [entities]." Section 9.08 of the Bylaws states: "All funds and property received by or coming into the custody of any chapter or any local unit are property of the corporation to be expended or applied only for the purposes authorized by the charter and only in accordance with the policies and regulations prescribed by the Board of Governors." Because the American National Red Cross and its local chapters constitute the same legal entity and motor vehicle fuel coming into the custody of a local chapter is property of the corporation as a whole, the following discussion will be couched in terms of sales of motor vehicle fuel to the Red Cross. My discussion and conclusion are, however, applicable to sales to the local chapters as well as to the American National Red Cross.

Both the federal statutory provisions and the Bylaws of the American National Red Cross remain as they were when discussed in Op. No. 83-086. The conclusion that the American Red Cross is an instrumentality of the United States for purposes of R.C. Chapter 1547 is, thus, applicable to both the national body and the local chapters.

I note further, as discussed in Op. No. 86-042 and Op. No. 83-086, that, if it were not concluded as a matter of statutory interpretation that the American National Red Cross is exempt from registration fees on watercraft that it owns, that

conclusion might be compelled as a matter of constitutional law. See U.S. Const. art. VI, cl. 2 (Supremacy Clause); United States v. New Mexico, 455 U.S. 720, 735 (1982) (constitutional immunity from local taxation is appropriate "when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned"); 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)).

It is, therefore, my opinion, and you are hereby advised, that ownership of a watercraft by an Ohio chapter of the American National Red Cross constitutes ownership by the United States so that, pursuant to R.C. 1547.58(C), the watercraft is excepted from the numbering requirement of R.C. Chapter 1547 and is, as a result, not subject to payment of any registration fees.