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AUTO LICENSE PLATES - Required on automobiles of Government agents.  
FEDERAL LAND BANKS - Required to procure license tags for automobiles.

1-22  
December 30, 1933.



Hon. G. V. Head  
General Counsel  
Farm Credit Administration  
St. Louis, Missouri

Dear Sir:

We have your request of December 19th, 1933, for an opinion upon the following state of facts:

"The united States government owns sixty-two and three-tenths percent of the capital stock of the Federal Land Bank of St. Louis and one hundred percent of the capital stock of the Federal Intermediate Credit Bank of St. Louis, the St. Louis Bank for Cooperatives and the Production Credit Corporation of St. Louis.

I should like a ruling from you as to whether these four institutions should be required to purchase Missouri State licenses for the cars owned by them. The Federal Land Bank of St. Louis owns forty-five cars, the Federal Intermediate Credit Bank of St. Louis three cars, and the St. Louis Bank for Cooperatives and the Production Credit Corporation of St. Louis one each.

In the past these organizations have been purchasing state license tags, but I am informed that in certain other land bank districts the cars bear the ordinary United States license plates.

These four loan agencies are all organized under Acts of Congress. The interest on their bonds is guaranteed by the United States government. They are under the direct supervision and control of the Governor of the Farm Credit Administration in Washington. The St. Louis Bank for Cooperatives and Production Credit Corporation of St. Louis are operating exclusively with government funds. The Federal Land Bank and the Intermediate Credit Bank issue and sell to the investing public their debentures, but a very large part of the money which they loan is obtained from the government. The employees of the four banks are treated as government employees for the purpose of the United States Economy Act under which the pay of government employees is at present reduced fifteen percent.

The term "farm credit administration", we understand, has been substituted for "federal farm loan board", and the two terms are used interchangeably in this opinion. It appears that certain property, except real estate, of federal land banks and loan associations are exempted from federal, state, municipal, and local taxation. These exemptions are specifically set out in Section 931 U. S. C. A. Title 12, 1933, Cumulative Annual Pocket Part. No mention is made of motor vehicles therein.

The epoch making case of *McCulloch v. Maryland*, 4 L. E. 579, (1819) denied the state the right to levy a tax upon the business of a corporation created by the federal government as an instrumentality of the government, but the authority of the state to levy a tax upon property belonging to that instrumentality of government was therein recognized. We quote from the opinion of Chief Justice Marshall, l.c. 609:

"This opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the state, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the state. But this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the government \*of the Union to carry its powers into execution. Such a tax must be unconstitutional."

There is a well defined distinction between a tax on the operation of a government agency and a tax on the property of the agent. In the McCulloch case, supra, the tax attempted to be levied by the state of Maryland was held to be unconstitutional. The effect of the tax was to prevent the issuing of notes by the bank without paying a certain tax on each note, in proportion to the size of the note, to the state of Maryland. The Supreme Court said, in the Union Pacific Railroad Company v. Feniston, 21 L. Ed. 787 (1873) l.c. 793:

"The tax, therefore, was not upon any property of the bank, but upon one of its operations; in fact, upon its right to exist as created. It was a direct impediment in the way of a governmental operation performed through the bank as an agent. It was a very different thing, both in its nature and effect, from a tax on the property of the bank."

In the Union Pacific case, supra, the corporation was an agent of the general government designed to be employed in both military and postal service for the government. In that case the court said, l. c. 792:

"It may, therefore, be considered as settled that no constitutional implications prohibit a state tax upon the property of an agent of the government merely because it is the property of such an agent."

The state has the right to impose taxes upon an agent of the federal government so long as that tax does not impair the agent's efficiency in the discharge of his duties to the government. At page 793 of the Union Pacific case, supra, the court said:

"It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they \*have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

The above principles are fully recognized in Johnson v. Maryland (1920), 65 L. Ed. 126, wherein the court held that a

post office employee could not be required to take out a driver's license as a condition precedent to his performance of his duties as mail carrier. The court held that to sustain such a law would be to allow the state to set up qualifications for a mail carrier in excess of the qualifications required by the federal government for the performance of his official duties, and that such a state law interfered with and impeded the mail carrier's attempt to obey orders of the federal government.

It is now well settled that agents of the federal government, such as mail carriers, are required to comply with this police regulation, levying an annual license tax on all motor vehicles and that this license for an automobile of a mail carrier must be obtained, even though the automobile is used exclusively for government purposes. *State v. Wiles* (1921), 199 Pac. (Wash.) 749; *Commonwealth v. Closson* (1918), 118 N. E. 653 Mass.; *Ex Parte Marshall* (1918) 75 Fla. 97.

We have found no federal or state provision specifically exempting automobiles used by a federal agency from the state auto license tax. It is apparent from the absence of any such legislation that Congress had no intention of exempting such automobiles from the payment of this tax, and any exemption would have to be specifically provided. Such seems to be the reasoning in *Crosen v. District of Columbia*, 2 Fed. (2d) 924, 1. c. 925, expressed in the following language:

"In view of the necessarily large number of these public vehicles in the District, the reason for bringing them within the purview of this act becomes apparent. One evident purpose of the act was to make it possible to identify traffic law violators, and it is clear, we think, that to have excluded this large class of vehicles would have frustrated to a considerable degree the purpose indicated. Moreover, it evidently was the view of Congress that a special provision was necessary to effect the exemption of this class of vehicles from the payment of fees for registration and tags."

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It is, therefore, the opinion of this office that since the banks and associations referred to in your letter are agencies of the federal government and the title to the automobiles in question are vested in that agency, that absent specific exemption, each of these agency automobiles must carry a state automobile license tag.

Respectfully submitted,

FRANKLIN E. REAGAN  
Assistant Attorney General

Approved:

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ROY McKITTRICK  
Attorney General

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