

LABOR AND INSPECTION:-Labor Commissioner has no right to require Federal Relief Administration to take out license and pay permit fee.

8-17
August 15, 1934.



Mrs. Mary Edna Cruzen,
Commissioner of Labor,
Jefferson City, Missouri.

Dear Mrs. Cruzen:

We are acknowledging receipt of your letter in which you inquire as follows:

"Has the Labor and Industrial Inspection Department the right to insist upon the Relief Administration securing mattress permits in order for them to make mattresses to be used in their relief work?"

Section 13308, R. S. Mo. 1929, provides as follows:

"No person shall make, remake or renovate bedding, except a person making, remaking or renovating bedding for his own use, until he has secured a permit from the state commissioner of labor and industrial inspection and has paid to the state commissioner of labor and industrial inspection an inspection and permit fee of twenty dollars, which such payment or charge shall constitute a factory inspection charge for the purpose of enforcing this article. The permit so issued by the state commissioner of labor and industrial inspection shall remain in force and effect until the end of the calendar year in which it was issued or until voided by the state commissioner of labor and industrial inspection for failure to maintain the required sanitary conditions in and around a factory in which bedding is made, remade or renovated, or for failure to sterilize and disinfect properly all previously used materials used in making, remaking or renovating bedding."

You inquire whether your Department can insist upon the Relief Administration securing mattress permits

before they would be entitled to make mattresses to be used in their relief work. We assume by the inquiry that you are referring to the Relief Administration of the Federal Government and the various agencies employed by them in making mattresses.

Under the foregoing section, any person is prohibited from making, renovating, etc., mattresses until he has secured a permit from your Department and until he has paid a permit fee of twenty dollars. As we view the above section you cannot issue a permit unless the permit fee is paid. In other words, the payment of the fee is a prerequisite to the right to secure the permit. The paying of the fee is a very essential requirement under the foregoing section and the issuing of the permit and the paying of the fee are so closely related that we do not see how the two can be separated. Since both go hand in hand the question arises whether your Department can compel the Relief Administration of the Federal Government, or one of its agencies, to take out a permit and pay the fee required by statute. We conclude that you cannot do so, because where it is necessary, before the Relief Agency can obtain a permit, that they pay a fee of twenty dollars, we conclude that your Department has no right to levy a tax or license fee upon an agency of the Federal Government.

The general rule applicable to the independence of the Federal and State Governments from the taxing powers of each is generally stated in 37 Cyc. page 878, as follows:

"The necessary independence of the federal and state governments imposes a limitation upon the taxing power of each. Neither can so exercise its own power of taxation as to curtail the rightful powers of the other, or interfere with the free discharge of its constitutional functions, or obstruct, embarrass, or nullify its legitimate operations, or destroy the means or agencies employed by it in the exercise of those powers and functions.

"According to this rule, it is not within the power of a state to lay any tax on the instruments, means, or agencies provided or selected by the United States government to enable it to carry into execution its legitimate powers and functions; but a state tax upon the property of an agent of the federal government is not prohibited merely because it is the

property of such an agent. State taxation of the instruments or agencies of government is not objectionable on this ground if it does not impair their usefulness or efficiency or hinder them from serving the government as they were intended to serve it.*****

In view of the foregoing we are of the opinion that your Department should not attempt to exact the permit fee from the agency of the Federal Relief Administration. While the exaction of one single permit fee might not be said to impair the usefulness or efficiency of the agencies of the government, yet if one fee could be required then a fee could be required for every agency used by them in this State. Naturally, if Missouri could exact a permit fee, then, of course, every other state in the Union could do likewise and the result would be that the usefulness and efficiency of the agencies of the Government would be greatly impaired.

While in the instant ^{case} there might be some doubt as to whether the exaction of this single fee would embarrass or obstruct the Federal Government in the exercising of its governmental powers and functions, yet we prefer to base our opinion upon the broad proposition that the Federal Government is exempt from taxation, license fees and permits in discharging its constitutional functions and in the operation of its powers of government. Generally speaking, it has always been held that the Federal Government and the State Government may exercise, through its agencies, governmental functions without being impaired by taxation by the other. We think this broad principle should govern in the answer to your inquiry.

It is therefore the opinion of this Department that your Department would have no right to exact from the Federal Relief Agency a permit fee before they would be entitled to make mattresses as an agency of the Federal Government in carrying out its governmental functions. Since you cannot require them to pay the permit fee, whether or not you issue them a license becomes immaterial.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

FWH:MS