

CONSULS:---VICE-CONSULS:---CONSULAR AGENTS: Immunity from auto license tax by reason of their office.

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April 26, 1934.

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Hon. John J. McCarthy
Captain and Acting Chief of Police
Department of Police
1300 Clark Avenue
Saint Louis, Missouri.

Dear Sir:

Your request for an opinion, dated March 26, reads as follows:

"Every now and then the perplexing question arises as to just what privileges foreign consuls assigned to St. Louis are entitled. Several consuls recently have applied to the Police Department for letters granting them immunity from arrest for not equipping their motor vehicles with Missouri State automobile tags and St. Louis City stickers.

"Under an opinion given in 1929 by the then City Counselor, Hon. Julius T. Muench, consuls have been furnished with personal courtesy letters. Mr. Muench was inclined to believe that they should take out city licenses for their cars, but pointed out that they would have to be prosecuted in the federal courts if they declined to take out city licenses. Mr. Muench at that time communicated with the then Attorney General Stratton Shartel, and Mr. Shartel answered that the State of Missouri, through the Secretary of State, was granting automobile licenses to foreign consuls free of cost. He approved this course, he wrote, but thought the matter of St. Louis granting city licenses to foreign consuls

was a matter for the city to decide. Upon receiving this letter Mr. Muench ruled the Police Department ought not to insist upon foreign consuls taking out city licenses for their cars, and this has been our policy since.

"I should appreciate receiving the suggestions of you gentlemen with respect to foreign consuls and automobile licenses, especially since the accredited chancellors to the foreign consulates located in St. Louis also are applying for immunity for their cars in a license way.

"What complicates the situation further is that there are two kinds of consuls in St. Louis. One kind is the consul de carriere, who is assigned here to represent his native country, and the other is the resident consul who represents some foreign country while maintaining a voting and legal residence in the city.

"Thanking you in advance for the prompt answer I confidently expect, I am, ***"

2 Corpus Juris, Section 29, page 1305, provides:

"Although some expressions of Vattel appear to countenance a different opinion, it is well settled that a consul is not entitled, by virtue of his office merely, to the immunities of a foreign minister, but is subject, civilly and criminally like other residents, to the tribunals of the country in which he resides. He is, however, upon principle and according to international usage, entitled to the liberty and safety necessary to the proper discharge of his functions. Thus a consul is generally exempt from personal taxes; *****."

We find the law stated thus in Phillimore's "International Law, Vol. II., Section CCLI., page 278:

"Some nations permit, and others forbid

their Consuls to trade (y); a trading Consul is, in all that concerns his trade, liable to the local authorities in the same way as any native merchant. In fact, sometimes natives of the place itself, in which consular services are required, are appointed Consuls; and thus are, at one and the same time, the subjects of the country in which they dwell and agents of a foreign State. Such an appointment is perhaps rightly pronounced, by a considerable authority, to be objectionable in principle (z). The prerogatives of such Consuls are very limited; the only exemptions which they appear to enjoy are from lodging soldiers and from personal service in the civic guards or militia (a).

And in the same work under Section 88, at page 320:

"When the Consul is not a citizen of the country in which the Consulate is situated, and does not own real estate therein, and is not engaged in business therein, he is secured against the liability to taxation by treaties or conventions with Austria-Hungary, Belgium, Bolivia, Denmark, Ecuador, France, Germany, Hayti, Italy, the Netherlands (and colonies), Peru, Salvador, Colombia, and Mexico, and in Germany the official income of a Consul is not taxable; but in the Dominican Republic, the Orange Free State, Persia, Portugal, the Hawaiian Islands, Russia, and Switzerland, if they engage in business they are subject to the laws of the country. And in general, if a Consular officer engages in business, or owns property in the country of his official residence, he cannot claim other exemptions in respect of such business or property than are accorded to citizens or subjects of the country."

In Wheaton's "International Law", pages 352 and 353, the law is stated thus:

"Consuls are not public ministers. Whatever protection they may be entitled to in the discharge of their official duties and whatever special privileges may be conferred upon them by local laws and usages, or by international compact, they are not entitled, by the general laws of nations, to the peculiar immunities of ambassadors. ***** The general result of the English, American and French cases establishes that consuls have certain privileges, but that they are not diplomatic officers, and that they cannot claim any of the immunities accorded specially to members of the diplomatic service."

The law, as stated in Flores' "International Law" Codified by Boschard, Section 526, page 257, reads in part as follows:

"Consuls have the right to be exempted from municipal or state burdens or charges imposed on citizens and resident foreigners. *****"

"They are also exempt from the obligation to pay military taxes and direct personal or sumptuary taxes imposed by the State, province or town, unless they own real property or engage in business."

Later, on page 258, Section 528 of the same work, the author states:

"Consular agents, whether they are citizens of the state which appointed them, or of the state where they exercise their functions, do not enjoy the same rights as consuls of the first class. Nevertheless, for acts performed in the exercise of their functions, by virtue

of their commission and within the scope of their special authority, they are not personally responsible."

In the case of The Lonsdale Shop v. Bibily, 126 Misc. 445, 213 N. Y. S. 170, 1.c. 173, the court said, when they excluded chancellors to foreign consuls and their secretaries from the immunities granted consuls:

"An examination of the contents of the certificate shows that the ambassador of France merely said that Mr. Bibily is the only person in the consulate general of France at New York who has charge of the duties appertaining to his office of chancellor. This does not in any way enable the defendant to come within the provisions of the Consular Convention of 1853 with France that he was at the time of service discharging the duties of a vice consul in the absence of the latter. I therefore reach the conclusion that the defendant, by virtue of his position is chancellor at the French consulate general in New York, is not entitled to immunity from the service of process.

CONCLUSION.

From your letter it seems that foreign consuls residing in St. Louis, Mo., object to take out city and state licenses on their personal automobiles, claiming that the state and city car license tax amounts to a tax on their persons, and that personal taxes are not chargeable against foreign consuls. Of course, if these consuls are liable for this tax and liable to prosecution for the failure to pay this tax, your department is ready to start making arrests, but if these consuls are not liable for this automobile license tax, but are immune from same, by reason of their office, then your department stands ready to grant them immunity from arrest for the failure to equip their

cars with State automobile tags and St. Louis city stickers.

These consular officers, we take it, admit their liability for automobile licenses except for their office and the privileges and immunities going with their particular office.

In the light of the Bibily case, supra, it follows as our opinion that since accredited Chancellors to the foreign consulates are not entitled as an international right to immunity from service of process, by reason of their office they likewise are not entitled to any immunity for the failure to procure State automobile license tags or St. Louis City stickers. They have no legal claim to immunity extended to foreign consuls.

As for these native resident consuls, who claim immunity for their failure to procure State automobile license tags or St. Louis City stickers, we can find no foundation for their claim in international law, and it is our opinion that they are not immune, for as was said in Phillimore's "International Law", "The prerogatives of such consuls are very limited; the only exceptions which they appear to enjoy are from lodging soldiers and from personal service in the civil guard or militia."

Consuls coming from foreign countries have a legal right to maintain their privileges and exemptions which by treaty or by custom they may be fully entitled to demand, and they have no legal right to aim at or expect more. They are generally and almost universally, by treaty and custom, immune from personal taxes on themselves or their belongings. So universal is this immunity provision that we believe your department is making no mistake in granting courtesy on this automobile license tax, when the owner of the car has fully satisfied your department that he is a foreign consul, by his credentials, and that the car is used for diplomatic matters.

Whenever a foreign consul or vice-consul presents to you his credentials of office, and proves his exemption to this license tax by virtue of a treaty or reciprocal custom, then, as in the past, he should be granted personal courtesy letters from your department, on any automobile used in the diplomatic service by them. Automobiles owned by them

but used for another business than the diplomatic mission, is subject to the State and City license tax.

This automobile tax is not a personal tax, but is an excise tax for the privilege of using the highways, and the fact that foreign consuls are exempt from personal tax on themselves and on their effects, does not of itself exempt them from paying this privilege tax on automobiles used in a private business.

A foreign vice-consul is only entitled to the immunity of a consul when the treaty under which he claims immunity extends to vice-consuls. Treaty arrangements with foreign countries differ as to immunities in tax matters, hence each vice-consul's claim for immunity would have to stand or fall on its own merits. No general hard fast rule can be laid down allowing legal immunity to vice-consuls as a class.

Prosecution of Consuls is almost universally provided for by treaty, whereby they must be prosecuted in Federal courts. This right, in some treaties, is extended to vice-consuls. I find no limitation beyond vice-consuls, hence I would say that generally, those native consuls and exchange consuls, together with consular chancellors can be prosecuted in State and City courts for their failure to procure automobile license tags.

Respectfully submitted,

APPROVED:

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REY McKITTRICK
Attorney-General.