

CONSULAR OFFICIALS: Consular officials and employees of the British Consulate are entitled to motor vehicle license and drivers' license without paying the tax or fee required therefor by statute.

JOHN M. DALTON
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June 19, 1953

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J. C. Johnsen

Honorable M. E. Morris
Director, Department of Revenue
Jefferson City, Missouri

Dear Mr. Morris:

This office is in receipt of your request for an official opinion which reads as follows:

"Occasionally we have requests from attaches of foreign branches of government who are stationed at consular offices in Missouri for drivers' licenses and automobile license tags to be issued by the Motor Vehicle Division of the Department of Revenue without charge, as a courtesy to the consulate.

"A request of this type was received recently from the Attache to the British Consulate in Kansas City. It is further requested that the Vice Consul be extended the courtesy of a free driver's license and automobile license tag.

"We would appreciate having a written opinion as to whether or not there is a provision of the law whereby the State of Missouri could furnish to persons representing foreign governmental offices as a Consul or Vice Consul free license plates and drivers' licenses."

Since the above request deals with application for automobile license tags and state drivers' license to be issued to officials and employees of the British Consul, the provisions of the United States Constitution concerning treaties with foreign nations becomes applicable.

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Paragraph 2, Article VI of said United States Constitution provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land: and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

By the terms of this provision of the United States Constitution treaties entered into by the Federal Government have the effect of overriding any provision of state constitutional law in conflict therewith. The Missouri Supreme Court in the case of Meyer v. Arnold (Division No. 1, 1941) 147 S.W.(2d) 644, 347 Mo. 413, in considering this subject stated:

"State laws, of course must yield to valid treaties where there is conflict between them. Article VI, Clause 2, of the Federal Constitution declares that all treaties made under the authority of the United States shall be the supreme law of the land. Even laws governing essentially local matters must bow when treaty provisions override them.
* * *"

Further, the court set out as a guide in considering the provisions of treaties the following statement:

"In determining this case we must adhere to the principle that generally treaties are to be liberally construed and their words are to be taken in their ordinary meaning and not in any special or restricted sense. * * *"

The Government of the United States has in fact concluded a treaty with the United Kingdom of Great Britain and Northern Ireland concerning the rights and privileges of consular officials and employees. See Treaties and Other International Acts Series 2494 concerning Consular Officers being a Convention with Protocol of Signature between the United States of America and the United Kingdom of great Britain and Northern Ireland proclaimed by the President of the United States of America September 8, 1952. This treaty provides in Article XIII (4) an exemption for consular officers and employees under certain conditions from all "taxes or

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other similar charges of any kind."

The complete provision of this treaty on this matter reads as follows:

"(4) Without prejudice to the preceding paragraphs of this Article, a consular officer or employee who is

"(a) not a national of the receiving state,

"(b) not engaged in private occupation for gain in the territory, and

"(c) a permanent employee of the sending state or, if not a permanent employee thereof, was not resident in the territory at the commencement of his employment in the consulate,

shall, except as provided in paragraph (5) of this Article, be exempt in the territory from all taxes or other similar charges of any kind which are or may be imposed or collected by the receiving state, or by any state, province, municipality, or other local subdivision thereof."

The exceptions referred to in paragraph No. 5 do not apply to questions here under consideration.

It appears from the decision of the Missouri Supreme Court in State ex rel. McClung v. Becker, 288 Mo. 607, that the so-called license tax on automobiles is in fact a revenue or tax measure and therefore it would seem to come squarely within the provision of this treaty as above quoted. It is not so clear whether or not the fee required to be paid on procuring a drivers' license is in fact a tax or revenue measure. However, the provision of the treaty as quoted above which mentions "taxes or other similar charges of any kind" would be broad enough to include the payment required in connection with a drivers' license.

Thus it is concluded that under the provisions of this treaty the State of Missouri may not require payment by the qualified consular officials or employees for a Missouri automobile license tag or a Missouri drivers' license. It would seem that the provision of this treaty would have the effect of eliminating from the statutes the requirement of the payment of a tax in order to secure an automobile license tag and of the \$1.00 fee in order to secure a drivers' license and thus the statute concerning drivers' license, Section 302.177 and concerning automobile license tags, Section 301.130 would require that the automobile license tags or drivers' license be issued by the proper state officials when proper application is made therefor since the statutes are mandatory as to their

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issuance when the statute has been complied with and consular officials and employees may comply with the statute without paying the tax or the fee.

Likewise the requirement of Section 301.025 that the applicant shall prove payment of personal property tax before securing an automobile license tag would have no application to said consular officials or employees since the personal property tax would clearly come within the above quoted provision of the treaty.

The above discussion presupposes that the consular officials and employees meet all of the requirements set out in Article XIII, Section 4 of the above quoted treaty and it is suggested that a specific certification as to the facts necessary to qualify under said provision should be required.

CONCLUSION

For the reasons set out hereinabove it is the conclusion of this office that consular officials and employees qualifying under the provisions of Article XIII, Section 4 of the Convention with Protocol Signature, between the United States of America and the United Kingdom of Great Britain and Northern Ireland, are not required to pay the tax or fee for an automobile license tag or a drivers' license and that upon complying with the other provisions of the statute the Director of Revenue is authorized and required to issue such license tag or drivers' license without charge and that proof of payment of personal property tax as a prerequisite of the issuance of an automobile license tag should not be required.

This opinion which I hereby approve was written by my assistant, Mr. Fred L. Howard.

Yours very truly,

JOHN M. DALTON
Attorney General

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