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OCT 7 1985

Honorable Henry B. Gray, III  
Administrator  
Alcoholic Beverage Control Board  
2715 Gunter Park Drive, West  
Montgomery, Alabama 36109

State Agencies -- Fees --  
Telephone -- Taxation.

1. Agencies of the State of Alabama are exempt from paying E-911 emergency telephone service charges.

2. Agencies of the State of Alabama are not required to pay local tax for telephone equipment rental or service.

Dear Mr. Gray:

In your letter dated September 11, 1985, to the Attorney General, you asked the opinion of this office on two questions.

Your first question was:

"Is the State of Alabama allowed to pay the E-911 service charge within the meaning of a service user as defined in Title 11-98-1(5) or is the State of Alabama, by virtue of being exempt from taxation, prohibited from paying said E-911 service charges?"

Section 11-98-1, et seq., Code of Alabama 1975, enabled county and municipal governing bodies to establish, within their respective jurisdictions, communications districts for the purpose of providing emergency telephone service, commonly referred to as E-911 service. The board of commissioners of any such communications district is empowered, when authorized by a vote of the majority of the persons voting within the district, to levy an emergency telephone service charge (Section 11-98-5(a), Code of Alabama 1975). Subsection (c) of Section 11-98-5 specifies, in part:

... Every billed service user shall be liable for any service charge imposed under this subsection until it has been paid to the service supplier....  
(Emphasis added.)

A "service user" is defined as "any person, not otherwise exempt from taxation, who is provided exchange telephone service in the municipality or county." (Section 11-98-1(5), Code of Alabama 1975). Because local governments do not possess the authority to tax the state government or its agencies, it is my opinion that the language "not otherwise exempt from taxation" exempts a "service user" that is a state agency from paying the E-911 service charge. To conclude otherwise would render the language superfluous and it cannot be presumed that the Legislature used language without meaning or application.

Your second question was:

"Numerous telephone companies, most recently AT&T Information Systems, add local tax to telephone equipment or service bills for the State of Alabama. It is my understanding that this is only authorized in Tuscaloosa based upon legislation passed effecting that location's ability to charge the State of Alabama local tax. Is the State of Alabama allowed in any other cases to pay local tax for telephone equipment rental or service?"

It is my understanding that the facts and circumstances involved in the local taxation of equipment in Tuscaloosa, which you refer to in your letter, were addressed in an informal opinion of this office rendered December 6, 1979, to Dr. Rex K. Rainer, Director of the State Highway Department. Said local tax was a tax on the lessor and not the lessee. However, it was determined that the amount of the tax may be passed on to the lessee (a state agency) if the contract between the lessor and lessee contained a tax pass on provision. Thus, said amount became, strictly speaking, an increase in the monthly rental charge and not a tax.

It is my opinion that local governments may not tax state agencies and, therefore, an agency of the state would not be required to pay local tax for telephone equipment rental or service. This conclusion is supported by an informal opinion of this office rendered on January 6, 1981, to R. G. Britton, Commissioner of the Board of Corrections.

Honorable Henry B. Gray, III  
Page -3-

If this office may be of further assistance to you, please do not  
hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK  
Attorney General

By



A. LEE MILLER, III  
Assistant Attorney General

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