

1973 S.C. Op. Atty. Gen. 277 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3607, 1973 WL 21062

Office of the Attorney General

State of South Carolina

Opinion No. 3607

August 27, 1973

***1 1. Photographers operating in interstate commerce cannot be taxed.**

2. A Federal Credit Union, although located within the city, is exempt.

3. A truck line cannot be taxed on purely interstate shipments but may be taxed on comingled shipments.

Clerk & Treasurer

City of Conway, S. C.

This is in reply to your request for the opinion of this office on three questions concerning the Business and Professional License Ordinance of the City of Conway. Cities are authorized to impose business and occupation license taxes by Section 47–271 of the Code.

First, you have asked: ‘Are photographers from out of state exempt from business licenses, if the pictures are taken in the city, then developed and finished out of the state and mailed back to the customer?’

Under the following facts, the South Carolina Supreme Court has held that a city business license tax cannot be imposed on a photography business: (1) A traveling salesman solicited orders and collected a deposit. (2) Later a traveling cameraman took the pictures and collected an additional payment. (3) The exposed film was sent to Chattanooga for development. (4) The proofs were mailed to a traveling salesman who presented the proofs to the customer for selection and order. (5) The approved proofs were mailed back to Chattanooga where the photographs were processed and finally the finished photographs were mailed to the customer. See *Olan Mills v. Town of Kingstree*, 236 S. C. 535, 115 S. E. 2d 52 (1960), also *City of Laurens v. Elmore*, 55 S. C. 477, 33 S. E. 560 (1899). The activities described in the *Olan Mills* case were held to be interstate commerce and, therefore, not subject to a local license tax.

If the activities of the photographers in Conway do not exceed those in the *Olan Mills* case, the license tax cannot be imposed. Also, under Section 14 of the Conway License Ordinance, such activities would be excluded from the tax.

Second, you have asked: ‘Is a Federal Credit Union, connected with Myrtle Beach Air Force Base, liable for business license if it has an office located in the city and is soliciting business here?’

The Federal government has enacted legislation which exempts Federal Credit Unions from all taxation (federal, state and local) except for property taxes. See 12 U.S.C.A., Section 1768. The credit union is, therefore, exempt from the business license tax, even though it is located within the city and is not on a Federal enclave.

Third, you have asked whether a trucking company that has a place of business located in Conway and which is engaged in both interstate and intrastate shipments can be subjected to the license tax.

This question raises an issue of fine distinctions and one not given to clear-cut answers. If the license tax is levied directly on the privilege of engaging in interstate commerce, it cannot be imposed, for to do so would run afoul of the Interstate Commerce Clause of the Federal Constitution. See *Southern Fruit Co. v. Porter*, 188 S. C. 422, 199 S. E. 537 (1938). However, in the 1953 United States Supreme Court Opinion of *Chicago v. Willett Co.*, 344 U.S. 574, 73 S.Ct. 460, the High Court upheld a

license tax levied by the City of Chicago on the business of operating trucks within the City measured by the carrying capacity of each. The trucks carried comingled cargoes to both local and interstate destinations. The Court in *Willett* distinguished an earlier case, *Sprout v. South Bend*, 277 U. S. 163, 48 S. Ct. 502, on the ground that the Chicago Ordinance did not impose a tax on trucks which did not carry goods within the City.

*2 The Conway license tax which requires a \$30.00 license for trucks under two tons capacity and a \$50.00 license for two tons and over, is quite similar to the tax levied by the City of Chicago. If the trucking company is a South Carolina corporation with its principal place of business in Conway, and if the trucks carry property for both local and interstate destinations, the tax can be imposed on the basis of the *Willett* decision. However, if certain trucks are used only for interstate transportation, no license should be required for these particular trucks for to do so would be a direct tax on the privilege of engaging in interstate commerce.

Thank you for sending a copy of the Conway License Ordinance.

John C. von Lehe
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South Carolina Tax Commission

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