Text as published on gao.gov, https://www.gao.gov/products/b-160936, archived 2026-07-17. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-160936 March 13, 1967

Number: B-160936

Date: 1967-03-13

B-160936 March 13, 1967

The Honorable Joe D. Waggonner, Jr. House of Representatives

Dear Mr. Waggonner:

By letter dated February 21, 1967, yo worte to our Office concerning an assesment of $1 per month against the United States by the Town of Logansport, Louisiana.

The facts giving rise to this matter are as follows. On September 12, 1966, the Mayor and Board of Alderman of the Town of Logansport passed ordinance No. 243 entitled:

"An ordinance levying a service charge against the metered public utility customers of the town of logansport for the purpose of defraying the cost and expense of maintaining municipal fire protection, health protection, police protection and municipal streets and alleys and to provide for the method of collection thereof and providing for the ordinance to become effective immediately as an emergency measure and repealing all ordinances in conflict herewith."

This ordinance levied a $1 per month service charge on all water or gas metered customers of Logansport. This sum was to be added to appropriate utility bills for each month and upon failure of any meterd customer to pay the charge levied, the furnishing of all municipal services and utlities would be discontinued to such metered customer. when this $1 assesment was billed to the Post Office Department, payment was refused. Such refusal was on the basis that the charge amounted t a tax and, as such, the United States was exempt from payment.

With regard to the position of the Post Office Department, the law is well settled that lands owned by the united States cannot be taxed by a State or by any of the political subdivisions of a State. The authorities relied upon for this proposition include, Van Brocklin v. Tennessee, 117 U.S. 151 (1886); United States v. Power County, Idaho, 21 F. Supp. 684 (1937) and United sates v. City of Detroit, 355 U.S. 466 at 469 (1958). This rule has equal application where the tax is a special tax or assesment for local inprovements as well as in the case of a general property tax against lands owned by the United States. Lee v. Osceola and Little River Road Imporvement District, 268 U.S. 643 (1924); Mullen Denevolant Corporation v. United States, 290 U.S. 89 (1933) and United States v. Anderson Cottonwood Irrigation District, 19 F. Supp. 740 (1937). Also a special assessment is a tax within the rule precluding a State from taxing lands owned by the United states because it is an exercise of the sovereign power of

taxation and like other taxes, is an involuntary exaction. United States v. Anderson Cottonwood Irrigation District, supra; Hager v. Reclamation District, 111 U.S. 701 at page 707 (1884). In addition to the above-cited court decisions, Louisiana has by statute exempted the property of the United States from taxation. See volume 28, LSA-R.S. S. 52 1 and the Attorney General of Louisiana has held that lands in Louisiana held by the Federal Government are entirely exempt from State and local taxes. See annotation 2 to above-cited statute, Op. Att. Gen. 1944-46, p. 1029.

It is your position that the $1 billed is not a tax but a charge for services rendered and that the Louisiana Supreme Court has so held. Our Office has held that payments based on the quantum of services rendered are not to be confused with givernmental functions supported exclusively by taxes. The results of this distinction are explained in a case reported at 31 Comp. Gen. 405, 408 as follows:

"It has been held that the constitutional inmunity of the Federal Government from state and local taxation does not extend to payment of charges for water or sewer services where the amount thereof is determined pursuant to statute by the quantity of water furnished or the amount of sewage disposed of, such charges being neither regarded as taxes or assessments byt as the price of the product or service rendered. State v. Taylor 79 WB. 2nd 127, 29 Comp. Gen. 120."

Our difficulty with the present consideration is that the ordinance states that the sums raised by this charge are for the purpose of financing proper fire protection, health protection, police protection and street and alley maintenance. While the device used for collection is through additions to gas and water billings, it is clear that the amount of gas or water used has no bearing on the amount assessed and that the functions to be financed are clearly of the type financed by local governments through taxation.

With regard to the Louisiana Supreme Cout's holdings in this area, that Court in City of Lake Charles v. Wallace, 170 Sc 2d 654 (1965) was considering the constitutionality of an ordinance which imposed a service charge on propriators of residences and apartment houses to defray the cost of disposal and sanitation. The defendant argued, among other things, that this service charge was in fact a tax which could not be imposed without a vote of the electorate. In answer to this argument the Court held on page 661:

"We do not find that the instant charge assessed for the collection and disposal of garbage is a tax; it is a service charge. The fact that revenue was received from the collection of such service charge levied under the police power of the city (the tax was upon occupants, not upon property) does not ipso facto convert the ordinance into a tax measure. as stated supra, we find that no vote of the electorate was required for the enactment of Ordinance No. 1381." * * *

It is important to note that in holding that the ordinance there in question imposed a charge rather than a tax the Supreme Court took note of the fact that persons not using the garbage facilities of the city did not have to pay the amount established by the ordinance. Specifically, on page 662 the court stated:

"Arthur Burch, Finince Director for the City of Lake Charles, testified in effect that if a person wished to decline the garbage collection and disposal service because he had a garbage disposla unit and did not need the service, the charge would not be billed to him when his non-use was cleared with the City:

that there had been instances where the City refunded money. He stated that some people say that they work and do not cook nor eat in their apartments and consequently have no garbage; that the City investigates these matters, and if the service is not used, the people are not billed. However, anyone who has garbage must use the City's service and pay the $2.00 charge.

In summary, while we agree that the amount involved is small and in view thereof the Federal Government may be at a disadvantage in explaining its position, on the facts presented we must come to the conclusion that the subject ordinance does levy a tax from which the United States is exempt.

We trust that what is stated here adequately explains the postion that our Office must take in this matter.

Sincerely yours,

Frank H. Weitzel Assistant Comptroller General of the United States