

United States Department of the Interior

OFFICE OF THE SOLICITOR

Field Office, Southwest Region

331 Sandoval Street

P.O. Box 1042

Santa Fe, New Mexico 87501

September 2, 1983

Memorandum

To: Regional Director, Southwest Region, National Park Service

From: Field Solicitor, Santa Fe

Subject: Arkansas Sales Tax - Hot Springs National Park, Arkansas

Your memorandum of August 16, 1983 requested our opinion regarding the authority of the State of Arkansas to impose excise taxes on sales transactions involving the Hot Springs Tower concessioner. The Superintendent previously had called John H. Harrington of this office on the matter, and related that the bath houses not collect sales taxes. In order to maintain consistency until the matter could be researched thoroughly, Mr. Harrington informed Mr. Giddings that if the bath houses do not collect such taxes, neither should the Tower.


Initially, it should be noted that the matter of tax collection does not involve directly the National Park Service. Any disputes over the State's taxing authority should be pursued by the affected concession--not the Park Service. The following discussion, therefore, is provided for your general information.

In Buckstaff Bath House Co. v. McKinley, 308 U.S. 558 (1939), the Supreme Court ruled that the State of Arkansas had the power to collect unemployment insurance taxes from the Buckstaff Bath House within the park. In so deciding, the Court relied upon Arkansas' 1903 cession of exclusive legislative jurisdiction over Hot Springs National Park. The State excepted from that cession and reserved to itself the power to serve civil and criminal process within the park and, more importantly, the power to "tax all structures and other property in private ownership on the Hot Springs reservation" This cession and its reservations was accepted by the United States by virtue of the Act of April 20, 1904 (33 Stat. 187), 16 U.S.C. § 372 (1976). See also Id. § 365.

This decision was followed 2 years later in Superior Bath House Co. v. McCarroll, 312 U.S. 176 (1941), in which the Supreme Court approved the State's authority to collect income taxes from the bath house also within the park. The Court construed the State's reservation of the right to collect taxes very broadly and did not limit that right to the collection of ad valorem property taxes as the language of that reservation might suggest.

On the basis of these opinions it seems relatively clear that the State of Arkansas does possess authority to impose taxes on sales transactions at the Hot Springs Tower. The right of other states to collect sales taxes from concessioners in park areas has been upheld. See Collins v. Yosemite Park & Curry Co., 304 U.S. 518 (1938); Rainier National Park Co. v. Martin, 18 F. Supp. 481. (W.D. Wash. 1937), aff'd per curiam, 302 U.S. 661 (1938).

In light of these cases, it seems odd that the State does not collect sales taxes from the bath houses. In any event, as noted above, these are matters between the affected concessioners and the State of Arkansas.


Gayle E. Manges
Field Solicitor, Santa Fe



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August 16, 1990

MEMORANDUM

TO: Regional Director, Southwest Region, National Park Service, Santa Fe, New Mexico

FROM: Gayle E. Manges, Field Solicitor Southwest Region

SUBJECT: Legality of Tax Collection, Hot Springs Mountain Tower, Hot Springs National Park, Arkansas

Whether the State of Arkansas may levy and collect various taxes within Hot Springs National Park was the subject of an opinion by this office dated September 2, 1983. It cited, among other authorities, two U.S. Supreme Court opinions upholding the power of the State of Arkansas to collect various taxes within the Park which is subject to the exclusive legislative jurisdiction of the United States. See Arlington Hotel Co. v. Fant, 278 U.S. 439 (1929); 16 U.S.C. § 365. As stated in the September 2, 1983 memorandum, the authority of the State to levy and collect certain taxes within the Park is to be construed broadly.

The City of Hot Springs has recently imposed a 1 cent use or sales tax on persons or visitors using the Hot Springs Mountain Tower. The Tower is owned and operated by the City and is located within the Park and within the City. The City charges a fee to visitors to use the Tower, therefore the tax if imposed will merely increase the revenue to the City. In the file the tax is referred to both as a 1 percent and a 1 cent tax.

An assertion has been made that the City may not collect a sales or use tax within the Park because it is an area of exclusive federal jurisdiction and only the State reserved the right to tax in the cession of jurisdiction. The Superintendent has advised that the imposition of the 1 cent or percent City tax on revenues derived by the City for use of the Tower is not a burden on Park Service operations. In my opinion under these circumstances whether the City is such a legal subdivision of the State so as to be authorized to impose a use or sales tax under the broad reservation by the State in the cession of jurisdiction is a matter which should be determined by the State and City.

Returned is your file.

Gayle E. Manges
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Enclosure