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MICHIGAN BEEF INDUSTRY COMMISSION: State agency.

WORDS AND PHRASES: "State agency."

SALES TAX: Exemption.

MICHIGAN BEEF INDUSTRY COMMISSION: Its use of state inter-agency mail.

The Michigan Beef Industry Commission is a state agency and is exempt from the state sales tax.

The Michigan Beef Industry Commission may utilize state inter-agency mail privileges but must inter-account the cost of this service.

Opinion No. 5089

October 1, 1976.

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You have requested my opinion as to the status of the Michigan Beef Industry Commission, created by 1972 PA 291; MCLA 287.601 *et seq*; MSA 12.481(51) *et seq*. Your letter states in part:

"1) Is the Commission a state agency, a state authorized organization, an independent industry group, or some other defined entity. Are there any regulations other than the Beef Industry Commission Act under which it should operate based on this organizational definition?

"2) In its apparent relationship to state government is it exempt from state sales tax?

"3) Is the Commission eligible to use the inter-agency mail service?"

The determination of whether the Michigan Beef Industry Commission is a state agency rests upon an examination of its character, its relations and its functions. The Supreme Court, in reviewing the status of the State Housing Development Authority said:

"We must, as has been stated, look behind the name to the thing named. We must examine its character, its relations, and its functions to determine, indeed, whether it is an agency or instrumentality of State government. . . ."

Advisory Opinion Re Constitutionality of PA 1966, No 346; 380 Mich 554, 571; 158 NW2d 416, 423 (1968)

An analysis of 1972 PA 291, *supra*, leads to the conclusion that the Michigan Beef Industry Commission is a state agency for reasons enumerated in this opinion.

In determining the Michigan State Apple Commission to be a state agency, my predecessor utilized the following tests in 2 OAG 1955-1956, No 2842, p 737, 738 (Dec 7, 1956):

"The Michigan State Apple Commission is created by the legislature

and controlled by it with delegated powers. Its funds which it uses for purposes of the act, including pay for its members, come from an assessment levied upon the production of apples at a rate per bushel established by the act. The duties and purposes are set forth and are generally declared to be ' . . . in the exercise of the police power of the state to protect public health, to promote the welfare of the state and to stabilize and protect and promote the apple industry of the state.'

"The Commission consists of seven members appointed by the Governor, with the advice and consent of the Senate for definite terms of office, plus two ex officio members whose capacity is advisory only without any vote. Its jurisdiction is co-extensive with the state boundaries. No profit is contemplated and funds derived from the taxation are to be expended to carry out the purposes of the act, including the statutory salary of members of the Commission. Such a body, created by the legislature, meets the requirements of a state agency whose members are state officers performing a governmental function in the interest of public health and welfare as declared by the law."

The language from the above quoted Michigan State Apple Commission opinion provides an almost analogous situation to the Michigan Beef Industry Commission. The Michigan Beef Industry Commission was created by the legislature (section 3(1) of the Act) and controlled by it with delegated powers. Its funds, which it uses for purposes of the Act, including pay for its members, come exclusively from an assessment levied upon all sellers in the amount of one tenth of one percent of gross receipts from sale of all cattle in the State (section 6(1)). The duties and purposes are set forth in the Act (section 5), and are generally declared to promote the beef industry of the State. The number of members of the commission and the qualifications therefore are set forth in the statute. Voting members are appointed by the Governor with the advice and consent of the Senate (section 3). The commission's jurisdiction is co-extensive with state boundaries. No profit is contemplated and funds derived from the taxation are to be expended to carry out the purposes of the Act, including the statutory salary of members of the commission in the amount of \$35.00 per day for each day spent in actual attendance at meetings (section 4(2)).

Furthermore, the Act provides (section 4(5)) that the commission may adopt procedures and promulgate rules necessary for the exercise of its powers and the performance of its duties in accordance with the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCLA 24.201 *et seq*; MSA 3.560(101) *et seq*. The title to that act provides in part that it is:

"AN ACT to provide for the effect, processing, promulgation, publication and inspection of *state agency rules*, determinations and other matters; . . ." (emphasis added)

The fact that the Michigan Beef Industry Commission is authorized to adopt such rules provides further emphasis that the commission is a state agency.

The Michigan Beef Industry Commission is created by the legislature and vested with delegated powers; it is not incorporated by a general corpo-

ration law; its funds are not obtained from membership dues, but are derived from an assessment set forth in the statute; and its governing board is selected by the Governor with the advice and consent of the Senate. The above examination of the Michigan Beef Industry Commission, its character, its relations and its functions lead to the determination that the commission is a state agency. See OAG 1975-1976, No 4934, p . . (May 5, 1976) and OAG 1975-1976, No 5011, p . . (June 18, 1976).

The determination that the Michigan Beef Industry Commission is a state agency exempts the commission from the payment of state sales tax. Even without an express exemption, property of the state and its agencies and instrumentalities is deemed exempt unless expressly included in the tax base. 2 OAG 1955-1956, No 2842, p 737, 738 (Dec 7, 1956); Cooley On Taxation, 4th ed, § 621, *et seq.* However, in the case of the sales tax, there is a specific statutory exemption for sales to the State of Michigan or its agencies. As stated in section 4 of the General Sales Tax Act, 1949 PA 272; MCLA 205.54; MSA 7.524:

"No person subject to a tax under this act need include in the amount of his gross proceeds used for the computation of the tax any proceeds of his business derived from sales to the United States, its unincorporated agencies or instrumentalities, any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States, the American Red Cross and its chapters and branches, and *the state of Michigan or its departments and institutions or any of its political subdivisions.*" (emphasis added)

The case of *Garavaglia v Department of Revenue*, 338 Mich 467, 471, 472; 61 NW2d 612, 613 (1953) is cited for the proposition that the General Sales Tax Act discloses a legislative intent that no direct or indirect sales or use tax may be imposed by the Department of Revenue on another entity of the State. See also *Romeo Homes, Inc. v Commissioner of Revenue*, 361 Mich 128, 136; 105 NW2d 186, 190 (1960); *Domestic Linen v Treasury Department*, 29 Mich App 629, 631; 185 NW2d 818 (1971). It is therefore the opinion of this office that the Michigan Beef Industry Commission, as a state agency, is exempt from the payment of state sales tax.

Your final question requests a clarification of whether or not the Michigan Beef Industry Commission may utilize the state inter-agency mail service. While the provisions of 1972 PA 291, *supra*, characterize the Beef Industry Commission as a state agency, the legislature has made an express exception as far as appropriations are concerned. In section 6 of the Act, MCLA 287.606; MSA 12.481(56), provisions are made for assessments with the following statement:

" . . . The *entire costs of operating the commission and its programs*, including the duties and responsibilities of section 4, shall be borne *entirely* by assessments levied by the commission under the authority of this act and *no state funds shall be appropriated for the operations of this act. A state department, board, commission or agency shall not expend any state appropriations relative to any operational or administrative duties imposed by this act. . . .*" (emphasis added)

The Michigan Beef Industry Commission is a state agency, and it may have access to the inter-agency state mailing system, but must through inter-accounting reimburse the Department of Management and Budget for the cost of this service from the assessments levied by the commission.

FRANK J. KELLEY,
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MENTALLY DEFICIENT AND MENTALLY ILL PERSONS: Treatment in a mental health institution.

All patients in a mental health institution are entitled to the same rights as other patients in the facility.

A person who is in a mental health institution because he is either (1) been transferred from a correctional facility, or (2) been committed to a mental institution by court of criminal jurisdiction, or (3) is incompetent to stand trial in a criminal proceeding, may not for those reasons be automatically segregated from other patients.

More stringent security measures with regard to patients transferred from prison, individuals found incompetent to stand trial, individuals found not guilty by reason of insanity, may be taken by a mental health institution if necessary to protect other patients.

Opinion No. 5092

October 5, 1976.

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You have jointly asked for my opinion on certain questions relating to the provision of services in mental health institutions to individuals transferred to a mental health institution from a correctional facility or committed to a mental health institution by a court exercising criminal jurisdiction. I have paraphrased your questions and will answer them *seriatim*.

1. Is an individual who is in an institution of the Department of Mental Health as the result of a transfer from a correctional institution or as the result of an order of a criminal court entitled to the same rights, privileges and benefits as other persons receiving treatment in the mental health institutions?

The Mental Health Code, 1974 PA 258, Ch 10, §§ 1000 through 1006; MCLA 330.2000 - 330.2006; MSA 14.800(1000) - 14.800(1006), provides for the transfer of a prisoner in a correctional institution to a mental health facility when the prisoner is mentally ill or mentally retarded and in need of mental health services. 1974 PA 258, §§ 1020 through 1044; MCLA