

01-106

TAXATION: MISCELLANEOUS TAXES – ADMISSION TAX.

EDUCATIONAL INSTITUTIONS: NORFOLK STATE UNIVERSITY.

Commonwealth and its instrumentalities, including Norfolk State University, are not subject to duty of collecting local admissions tax charged for attendance at classified public and private events. Ordinance purporting to impose duty on Commonwealth or its instrumentalities to collect admissions tax is *ultra vires*.

The Honorable Sharon M. McDonald
Commissioner of the Revenue for the City of Norfolk
November 20, 2001

You ask whether Norfolk State University is required to collect and remit the admission tax imposed by ordinance of the City of Norfolk.¹ You indicate that the question turns on whether the University, an institution of higher education, is within the ambit of § 58.1-3817(2) of the *Code of Virginia*.

Section 58.1-3817 divides into six classes "events to which admission is charged ... for the purposes of taxation." Section 58.1-3817(2) classifies for taxation "[a]dmissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations."²

In a 1983 opinion, the Attorney General concludes that an ordinance is *ultra vires*³ to the extent it imposes the obligation to collect a meals tax on the Commonwealth and her instrumentalities, including institutions of higher education.⁴ Although you observe that the conclusion in the 1983 opinion is not dispositive of your question, the legal principles governing the analysis in that opinion do, in fact, clearly apply to the question you pose.

It has long been a rule of statutory construction that "the Commonwealth is not bound by a statute of general application, no matter how comprehensive the language, unless named expressly or included by necessary implication."⁵ The Supreme Court of Virginia has held that "[t]axes are not to be assessed against [the State] or its subdivisions unless the right to tax is made plain,"⁶ because "the functions of government shall not be unduly impeded."⁷ Thus, without express legislative authority, a

locality may not impose a tax or the economic incidence of a tax on the Commonwealth or its agencies and instrumentalities.⁸ The 1983 opinion regarding application of the meals tax extends the rationale to the duty to collect and report a local tax.⁹

The City of Norfolk necessarily relies on the language of § 58.1-3817 to impose on Norfolk State University the duty to collect the admission tax. This statute does not expressly mention or necessarily implicate the Commonwealth and its instrumentalities within its terms. The purpose of § 58.1-3817 is to classify the public and private *events* to which admission is charged for purposes of local taxation. The language of the statute clearly does not subject the Commonwealth to the duty of collecting the classified admissions taxes.

Based on the above, I am of the opinion that the Commonwealth and its instrumentalities, including Norfolk State University, are not subject to the duty of collecting local admissions taxes. Given the bias against imposition of such duties on the Commonwealth inherent in the controlling principles of law summarized above, any doubt is to be resolved in favor of the Commonwealth. Accordingly, I am of the opinion that an ordinance purporting to impose a duty on the Commonwealth or its instrumentalities to collect an admission tax is *ultra vires*.¹⁰

¹See Norfolk, Va., Ordinance 40,393 (June 26, 2001) (reciting language in 1946 Va. Acts ch. 98, § 2-a, at 131); *see also* Norfolk, Va., Code § 24-288 (1999) (defining "admission charge," "place of amusement or entertainment").

²You also ask whether Norfolk State University is a "college" as this word is used in § 58.1-3817(2). Norfolk State University is one of the state-supported institutions of higher education listed in § 23-9.5 defined as a "public college." Va. Code Ann. § 23-9.10:3 (Michie Repl. Vol. 2000). An "institution of higher education" "[o]perates a facility as a college or university ... which offers degrees or other indicia of a level of educational attainment beyond the secondary school level." Va. Code Ann. § 23-265(2) (Michie Repl. Vol. 2000). In addition, an "institution of higher education" "[u]ses the term 'college' or 'university,' or words of like meaning" interchangeably. Section 23-265(3). The question of whether Norfolk State is a "college," however, is not a relevant or germane factor to the main question you have posed.

³The term "*ultra vires*" means "[u]nauthorized; beyond the scope of power allowed or granted ... by law." Black's Law Dictionary 1525 (7th ed. 1999).

⁴See 1983-1984 Op. Va. Att'y Gen. 381, 383 (concluding that town ordinance is *ultra vires* to extent it required Virginia Polytechnic Institute and State University to collect tax on meals).

⁵Commonwealth v. Spotsylvania, 225 Va. 492, 494, 303 S.E.2d 887, 889 (1983); *see also* Deal v. Commonwealth, 224 Va. 618, 620, 299 S.E.2d 346, 347 (1983) (holding that Commonwealth is person or party within intent of statute only when named expressly or by necessary implication).

⁶Norfolk v. Nansemond Supervisors, 168 Va. 606, 626, 192 S.E. 588, 596 (1937).

⁷Pelouze v. Richmond, 183 Va. 805, 811, 33 S.E.2d 767, 769 (1945).

⁸1997 Op. Att’y Gen. 184, 185 (citing 1983-1984 Op. Va. Att’y Gen., *supra* note 4, at 382-83).

⁹1983-1984, *supra*, at 383 (noting that prohibition against local taxes being imposed on Commonwealth, in absence of express statutory authority, extends to prohibit imposition on Commonwealth of duty to collect and make reports for any local tax).

¹⁰*See id.* (concluding that, if town ordinance had sought to impose meals tax on University as seller of meals, ordinance would be *ultra vires* with respect to Commonwealth and her instrumentalities, including University).

[Back to November Index](#)