

August 4, 1964

"City"

Before indicating our position with respect to the understanding expressed in your letter of July 28, I shall comment generally on the problem.

A good starting point is Opinion of Attorney General NS-3889, dated November 6, 1941. You are no doubt familiar with this opinion, but a copy is attached for your convenient reference.

You will note that this opinion concludes that Section 1893 of the Code of Civil Procedure is inapplicable to the facts given, because the copies furnished were not certified. Under the facts, however, there was no indication that the City was legally obligated to furnish the copies or to allow tracings to be made.

As stated in the facts, "We are informed that the Bureau does not permit removal of such maps, but will permit tracings to be made ... or will furnish blueprints for a charge of four cents per square foot, that being the approximate cost." (Underlining added.)

We have since taken the position that if the furnishing of the copies, whether certified or not, is made mandatory by statute or ordinance, whether the amount of the charge is fixed by law or by a public official, a governmental act is performed resulting in the transfer of tangible personal property and the tax does not apply. It is, of course, assumed that the charge would be, as you indicate, approximately on a cost-reimbursement basis.

If, however, the furnishing of the document is permissive, a taxable sale results. An example of this is Section 15622 of the Government Code, which provides that the Board of Equalization "may sell at prices fixed by the board copies of the revenue laws of the state, maps, and other documents."

If, accordingly, the City is in fact required by law or ordinance to furnish copies, even though certification is not requested, then the tax will not apply whether the fee is fixed by law, ordinance, or public official. It would appear to us that although Code of Civil Procedure, Section 1893, makes mandatory the furnishing of certified copies, a reasonable interpretation is that the furnishing of the copy is no less mandatory, even though the person requesting the copy does not wish it certified.

Very truly yours,

E. H. Stetson
Tax Counsel

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