OPINION 29

OFFICIAL OPINION NO. 29

December 5, 1974

Honorable Craig B. Campbell
Indiana State Representative
915 Spring Valley Drive
Anderson, Indiana 46011

Dear Representative Campbell:

This is in response to your request for my official opinion on the following question:

Under the Indiana Constitution and under the Indiana Home Rule Act statutory provisions, is there sufficient authority for a city or town to impose a service charge reasonably related to the costs of services performed by the city for exempt properties; to wit: Does a city or town have authority to impose a reasonable service charge for the rendering of municipal services, such as police or fire protection, trash removal, sanitation, etc., to otherwise 'exempt' property, such as churches, lodges, veterans' posts, schools, etc?

ANALYSIS

Article 10, Section 1(a) of the Indiana Constitution provides that the Indiana General Assembly may exempt from property taxation any property in the following classes:

“(1) Property being used for municipal, educational, literary, scientific, religious, or charitable purposes; . . .”

The Indiana Code of 1971, Section 6-1-1-2, provides in part that the following property shall be exempt from taxation:

“. . . Fifth. Every building, or part thereof, used and set apart for educational, literary, scientific, religious or charitable purposes by any institution or by any individual or individuals, association or corporation, provided the same is owned and actually occupied by the institution, individual, association or corporation
using it for such purpose or purposes, and every building owned and occupied, used and set apart, for educational, literary, scientific, fraternal or charitable purposes by any town, township, city or county and the tract of land on which such building is situate, including the campus and athletic grounds of any educational institution not exceeding fifty [50] acres; also the lands purchased with the bona fide intention of erecting buildings for such use thereon, not exceeding forty [40] acres; also the personal property, endowment funds, and interest thereon, belonging to any such institution or any town, township, city or county and connected with, used or set apart for any of the purposes aforesaid . . .”

*However,* the Indiana Code of 1971, Section 18-1-1.5-4 provides that:

“A city shall have the power to:

(a) Charge a reasonable fee for licenses;

(b) Fix or levy a charge or assessment against property benefitting from the furnishing of municipal facilities or services which is equivalent to the expense of furnishing such facilities or services.”

This provision is limited by the Indiana Code of 1971, Section 18-1-1.5-20 [Burns’ Section 48-1470], which provides in part:

“A city shall not exercise any of the following powers, unless such power is expressly granted by law, and such power shall be exercised only to the extent and in the manner provided by law:

“(a) The imposition of any tax: *Provided,* That this limitation shall not be construed to prohibit any city from imposing fees reasonably related to the costs of administration of licensing or regulatory functions, or from assessing charges reasonably related to the costs of services performed or special benefits provided by any facility, function or activity of the city; . . .” (My emphasis.)
If it is a tax, the Constitution would prohibit its imposition by a city, since only the Indiana General Assembly may impose a tax. This power cannot be delegated. *Indiana Constitution*, Article 10, Section 1 and Section 2. But, the service charge you describe for some services is not a tax but a special benefit assessment or fee for services. Such a fee for services or special benefit assessment may be imposed against the institutions receiving certain services without regard to their status as tax exempt municipalities, educational, literary, scientific, religious, or charitable institutions under the Indiana Code of 1971, Section 6-1-1-2, so long as said service charges are reasonably commensurate with the services provided.

**CONCLUSION**

With the reservations expressed in the foregoing legal analysis, it is my Official Opinion that sufficient authority exists under the Indiana Constitution and under the Indiana Home Rule Act for a city to impose a service charge, on otherwise exempt properties, *reasonably* and *directly* related to the actual cost of services performed by the city.