

censees that they be fingerprinted on the form of application for license which you, as Superintendent of State Police, prescribe.

Your last question deals with section 9, subsection 4, of the Acts of 1935, as amended by chapter 158, Acts of 1937. You ask whether or not the provision in the section relative to a form to be prescribed by the Superintendent of State Police for the purpose of keeping of records by the sellers of pistols, may also be such as to require the applicant to be fingerprinted before a sale can be made.

Since one of the intentions of the Act, as previously pointed out, is for the purpose of identification, it is my opinion that the form should require the fingerprints, for the reason that an identification at the time of purchase is more imperative from a point of view of identifying the individual and furthermore, from a point of view of a policing measure than at any other time.

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**AUDITOR OF STATE: Gasoline Tax, exemption of American National Red Cross on gasoline used by it in flood relief in southern Indiana. Red Cross, whether same is a governmental agency.**

May 11, 1937.

Hon. Laurence F. Sullivan,  
Auditor of State,  
Indianapolis, Indiana.

Dear Mr. Sullivan:

I have before me your letter of May 6, reading in part as follows:

“The question has arisen as to whether or not the American Red Cross is a recognized United States Government agency, and, as such, whether or not this department is protected in allowing exemption of the State motor vehicle fuel tax on sales of motor vehicle fuel to this organization.

“If the American Red Cross may purchase motor vehicle fuel less the Indiana State tax, should this department require the use of Form 1094, which form is furnished by the United States Government to the various governmental branches entitled to purchase motor vehicle fuel tax free.”

You make the further statement of conflicting expressions from government officials as follows:

"This matter was taken up with the federal authorities. Commander C. R. Eagle, Special Assistant, Procurement Division, Treasury Department, Washington, D. C., in a radiogram, dated April 8, 1937, advised that the American Red Cross was not recognized as a governmental agency, and tax exemption was a matter for the decision of the state government.

"In a letter to the Collector of Internal Revenue, Indianapolis, Indiana, D. S. Bliss, Deputy Commissioner, advised that the American Red Cross is an agency of the United States Government; therefore, all sales of gasoline and lubricating oil, by the producer thereof, to the American Red Cross may be made tax free in accordance with the provisions of article 24, of regulations 44, as amended by treasury, decision 4604. This same information was given this department by the Treasury Department, Internal Revenue Service of Louisville, Kentucky, although in a letter of April 16, 1937, C. R. Eagle advised that the American Red Cross is an eleemosynary institution, and not a department of the Federal government. He further stated that the policy of the Bureau of Internal Revenue has been to exempt the American National Red Cross from payment of federal taxes on gasoline and lubricating oil purchased."

My opinion, in view of the foregoing, is requested. The immediate question grows out of the services rendered by the American Red Cross in flood relief in southern Indiana counties made necessary by the 1937 flood devastation in the Ohio River valley, and my answer is limited to gasoline used by the Red Cross in that particular project.

The association was first organized in 1881. It was re-incorporated in 1893, again in 1900 and again in 1905. The Act of January 5, 1905, reincorporating the association was prefaced by the following:

"Whereas on the twenty-second of August, eighteen hundred and sixty-four, at Geneva, Switzerland, plenipotentiaries respectively representing Italy, Baden, Belgium, Denmark, Spain, Portugal, France, Prussia,

Saxony, and Wurttemberg and the Federal Council of Switzerland agreed upon ten articles of a treaty or convention for the purpose of mitigating the evils inseparable from war; of ameliorating the condition of soldiers wounded on the field of battle, and particularly providing, among other things, in effect, that persons employed in hospitals and in according relief to the sick and wounded and supplies for this purpose shall be deemed neutral and entitled to protection; and that a distinctive and uniform flag shall be adopted for hospitals and ambulances and convoys of sick and wounded and an arm badge for individuals neutralized; and

“Whereas said treaty has been ratified by all of said nations, and by others subsequently, to the number of forty-three or more, including the United States of America; and

“Whereas the International Conference of Geneva of eighteen hundred and sixty-three recommended ‘that there exist in every country a committee whose mission consists in cooperating in times of war with the hospital service of the armies by all means in its power;’ and

“Whereas a permanent organization is an agency needed in every nation to carry out the purposes of said treaty, and especially to secure supplies and to execute the humane objects contemplated by said treaty, with the power to adopt and use the distinctive flag and arm badge specified by said treaty in article seven, on which shall be the sign of the Red Cross, for the purpose of cooperating with the ‘Comite International de Secours aux Militaires Blesses’ (International Committee of Relief for the Wounded in War); and

“Whereas in accordance with the requirements and customs of said international body such an association adopting and using said insignia was formed in the City of Washington, District of Columbia, in July, eighteen hundred and eighty-one known as ‘The American National Association of the Red Cross,’ reincorporated April seventeenth, eighteen hundred and ninety-three, under the laws of the District of Columbia, and reincorporated by Act of Congress in June, nineteen hundred; and

“Whereas it is believed that the importance of the work demands a repeal of the present charter and a reincorporation of the society under government supervision: Now, therefore.”

By section 2 of the incorporating Act it was provided that *“the corporation hereby created is designated as the organization which is authorized to act in matters of relief under said treaty,”* the treaty referred to in the preface.

In addition to the persons named and to whom the charter of reincorporation was granted, five other persons were to be named by the President of the United States, one to be chosen from each of the Departments of State, War, Navy, Treasury and Justice.

Title 36 U. S. C. A., Section 1.

The purposes of the incorporation are set out to be,

“First. To furnish volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the conference of Geneva of October, 1863, and also of the treaty of the Red Cross, or the treaty of Geneva, of August 22, 1864, to which the United States of America gave its adhesion on March 1, 1882.

“Second. And for said purposes to perform all the duties devolved upon a national society by each nation which has acceded to said treaty.

“Third. To succeed to all the rights and property which have been hitherto held and to all the duties which have heretofore been performed by the American National Red Cross as a corporation duly incorporated by Act of Congress June 6, 1900, which Act is hereby repealed and the organization created thereby is hereby dissolved.

“Fourth. To act in matters of voluntary relief and in accord with the military and naval authorities as a medium of communication between the people of the United States of America and their Army and Navy, and to act in such matters between similar national societies of other governments through the ‘Comite

International de Secours,' and the Government and the people and the Army and Navy of the United States of America.

"Fifth. And to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry on measures for preventing the same."

Title 36 U. S. C. A., Section 3.

The original governing body was to consist of eighteen persons, six to be appointed by the incorporators and twelve by the President of the United States, one of whom to be designated by the President as chairman. After six or more state or territorial organizations were formed, the eighteen members *supra* were to consist of six named by the incorporators, six by the state or territorial representatives and six by the President, one of whom to be designated chairman and five of whom to be selected, one each, from the Department of State, War, Navy, Treasury and Justice.

Title 36 U. S. C. A., Section 5.

The association is required to make yearly reports to the War Department, a copy of which, when the report has been audited, to be transmitted to Congress.

Title 36 U. S. C. A., Section 6.

Authority for the acceptance of assistance tendered by the American National Red Cross is expressly conferred upon the President in time of war or when war is imminent, during which time the personnel entering upon such duties while on their way to and while serving at such duties and while returning therefrom are transported and subsisted at the cost and charge of the United States as civilian employees.

Title 36 U. S. C. A., Sections 10 and 11.

There is no general legislation or charter provisions, however, expressly authorizing the President to accept the assistance tendered by the Red Cross of the character described under subdivision "Fifth" of the purpose section as above

set out, and I think I have pointed out in the foregoing all of the charter provisions bearing upon your primary question, which is the question as to whether the American National Red Cross is a United States Government agency.

Although the Act of reincorporation seems to tie the organization up with the United States Government rather definitely by providing for the appointment of five of the incorporators by the President, one from each of the Departments of State, War, Navy, Treasury and Justice, and by providing for the appointment by the President of six of the eighteen members constituting the governing body, I do not think the corporation thereby becomes for *all* purposes and at *all* times a United States Government agency. It seems to me, however, that when it is engaged in the performance of a service which has been or is being accepted by the President in the fulfillment of some governmental duty which the Government owes to its people, it may very properly be recognized as a United States Government agency.

It is true, as already pointed out, that there is no express general legislation or charter provisions which would authorize the President to accept the services of the Red Cross in such a situation as that caused by the flood of 1937 in the Ohio River valley, but the Government has repeatedly given recognition to the catastrophe as a calamity of national scope and the appropriate subject of National Government aid.

For the reasons given, I think the American National Red Cross may be properly recognized as a United States Government agency as applied to services rendered in cooperation with the Government to the stricken people of the flood area of the Ohio River valley caused by the 1937 flood and that your department is authorized to allow an exemption to the association of the State motor vehicle fuel tax on sales of motor vehicle fuel to it and used by it in that particular relief project. In granting the exemption I think it would be proper to require the use of Form 1094 furnished by the United States Government to its various agencies entitled to purchase motor vehicle fuel tax free.