

1981-82 Va. Op. Atty. Gen. 361, 1981-82 Va. Rep. Atty. Gen. 361, 1982 WL 175830 (Va.A.G.)

Office of the Attorney General
Commonwealth of Virginia

*1 May 14, 1982

TAXATION. LICENSE TAXES UPON THE BUSINESS OF SEVERING OIL OR PETROLEUM FROM THE EARTH.

The Honorable C. Dean Foster, Jr.
County Attorney for Scott County

You advise that Scott County wishes to impose a license tax upon persons conducting or engaging in the business of severing or extracting oil or petroleum from the earth within the county. You ask whether such a license tax may be imposed under the authority of either § 58-266.1 or § 58-266.1:1 of the Code of Virginia (1950), as amended. [FN1] If an ordinance imposing such a license tax may be enacted pursuant to § 58-266.1, you also ask whether such a license tax is subject to the rate limitation contained in § 58-266.1B4.

This Office has previously opined that the extraction of natural resources, as well as the extraction and crushing of stone, may be taxed under the authority of § 58-266.1. See Reports of the Attorney General (1973-1974) at 375 and (1968-1969) at 234. I concur in such prior Opinions of this Office and conclude that the business of extracting oil or petroleum may likewise be taxed under § 58-266.1.

Because such a business enterprise (the extraction or **severance** of oil or petroleum) does not fit within any of the classes of business described in subsections 1, 2, or 3 of § 58-266.1B, it necessarily falls within § 58-266.1B4, which includes “all other businesses and occupations not specifically listed or excepted in this section...” Thus, such a license tax under § 58-266.1 would be subject to the rate limitation contained in § 58-266.1B4.

Turning to whether such a license tax may be levied pursuant to § 58-266.1:1, that section authorizes the governing body of any county to “levy a license tax on every person engaging in the business of severing **coal or gases** from the earth...” (Emphasis added.) It is plain that oil or petroleum is not **coal**, and it seems to be equally clear that oil or petroleum is not encompassed within the term “gases.” Where the language of a statute is free from ambiguity, such language is to be given its plain meaning without resort to rules of interpretation. See 17 M.J. Statutes § 61 (1979).

Finally, tax laws are liberally construed in favor of the taxpayer and should not be extended by implication beyond the clear import of the language used. No one can be subjected to payment of a tax unless he clearly comes within the terms of the act. City of Richmond v. Valentine, 203 Va. 642, 125 S.E.2d 854 (1962). Based on the principles recited above, I must conclude that a locality does not have authority under § 58-266.1:1 to subject the business of extracting oil or petroleum to such a license tax.

In summary, I am of the opinion that a license tax may be imposed under the authority of § 58-266.1, but not §

58-266.1:1. The tax so imposed would be subject to the rate limitation contained in § 58-266.1B4.

*2 John Marshall Coleman
Attorney General

[FN1] Both sections authorize license taxes in certain situations but the tax rate permitted by § 58-266.1:1 is higher than that permitted by § 58-266.1. Thus the distinction between the two statutes takes on additional significance.

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