

Mr. Howard C. Beck, Jr., City Auditor (cont'd)

to operate for profit. From their very nature, they are not. They are primarily set up and maintained for the health and recreation of the public.

In Allen vs. Regents, 304 U.S. 439, 82 Law Ed. 1448, the United States Supreme Court held that the tax immunity implied from the dual sovereignty recognized by the Constitution did not extend to business enterprises conducted by the States for gain. In that case, which involved an admission tax on tickets to athletic events conducted by State owned and operated Universities, the Court pointed out that the admission tax was not imposed on the State agency but upon the person paying the admission charge. The Court said, page 452:

"The important fact is that the State, in order to raise funds for public purposes, has embarked in a business having the incidents of similar enterprises usually prosecuted for private gain. If it be conceded that the education of its prospective citizens is an essential governmental function of Georgia, as necessary to the preservation of the State as is the maintenance of its executive, legislative and judicial branches, it does not follow that if the State elects to provide funds for any of these purposes by conducting a business, the application of the avails in aid of necessary governmental functions withdraws the business from the field of federal taxation."

The test therefore is whether the tax extends to these municipal functions which are not conducted by the City of Baltimore for gain. Since the law has been amended and the 1% gross receipts tax on admissions as above set forth is now limited to "every person, firm or corporation operating for profit any place of amusement, offering for profit any form of entertainment or maintaining for profit any facilities for sport or recreation", it is my opinion that admissions from these municipal functions which are not set up to operate for profit are no longer subject to the tax in question.

Very truly yours,

(signed) MICHAEL J. HANKIN

Assistant City Solicitor

MJH/SB  
APPROVED:

(signed) F. MURRAY BENSON  
City Solicitor