

Therefore, it is our opinion that the regulatory powers given to you by R.S. 24:2-1 apply to all of the provisions of subtitle 1 of Title 24, including Chapter 52 of the Laws of 1961 which has been made a part of that subtitle.

Very truly yours,

ARTHUR J. SILLS
Attorney General

By: WILLIAM BLOHM, JR.
Deputy Attorney General

JULY 19, 1963

Ross R. BECK, *Secretary*
Monmouth County Board of Taxation
Hall of Records
Freehold, New Jersey

MEMORANDUM OPINION—P-5

DEAR MR. BECK:

The Monmouth County Board of Taxation has asked our opinion as to the taxability of land acquired by the Small Business Administration, a governmental entity created by federal statute.

In your request for this opinion you have indicated that the Small Business Administration acquired title to a particular portion of property on February 29, 1960 by a "Sheriff's Deed." It is assumed that title was thus acquired by virtue of mortgage foreclosure proceedings in which the Small Business Administration was the foreclosing mortgagee under a mortgage to secure a loan given by it to the particular property owner-mortgagor under the Small Business Administration Act, 15 U.S.C.A. § 631, et seq.

Under the Act creating the Small Business Administration, it is expressly provided that any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due thereon to the state or any political subdivision thereof, 15 U.S.C.A. § 646. Consequently, there can be no question that the subject property was taxable to the owner thereof at the time the Small Business Administration held a mortgage security interest on the property.

We are of the opinion, however, that the property became tax exempt when the fee title was acquired by the Small Business Administration upon the foreclosure of its mortgage lien. It is settled law that in the absence of Congressional consent, a Federal instrumentality cannot be subjected to the plenary taxing power of the states or any of its political subdivisions. *McCulloch v. Maryland*, 17 U.S. (4 Wheat,) 316 (1819). Nor can the property of any Federal instrumentality be subject to local taxation. *Clallam County, Wash. v. United States*, 263 U.S. 341, 44 S. Ct. 121 (1923).

These principles are applicable to the Small Business Administration and any property owned by it. The Small Business Administration was created expressly to serve Federal purposes as declared in the operative enabling legislation, 15 U.S.C.A. §§ 631, 633. This was recognized by the United States Supreme Court in *Small Business Administration v. McClellan*, 364 U.S. 447, 450, 81 S. Ct. 191, 195 (1960) wherein it was stated:

“* * * [T]he Small Business Administration is ‘an integral part of the governmental mechanism’ created to accomplish what Congress deemed to be of national importance.”

The Small Business Administration Act neither explicitly nor by implication provides a Congressional waiver of immunity from taxation. While Congress has in many areas and in many instances consented to the imposition of state or local taxes upon Federal instrumentalities or their property [e.g., *Reconstruction Finance Corp. v. Beaver County, Pa.*, 328 U.S. 204, 66 S. Ct. 992 (1946); *First National Bank v. Adams*, 258 U.S. 362, 42 S. Ct. 323 (1922)], it has not permitted the imposition of such taxes with respect to the Small Business Administration on property owned by it.

Therefore, we advise you that property owned by the Small Business Administration is exempt from local property taxation.

Very truly yours,

ARTHUR J. SILLS
Attorney General

By: ALAN B. HANDLER
Deputy Attorney General