

<p><b>Historical</b></p> <p><b>Opinion Entry</b></p> <p>Created: 05/24 03:29 PM Modified: 07/02 12:08 PM</p>	<p>Title: AGO 62-122</p> <p>Topic: CRIPPLED CHILDREN'S COMMISSION EXPENDITURE OF FUNDS FOR TREATMENT AND CORRECTION OF DEAFNESS-CH. 391; §391.01, F. S.</p> <p>Category: Formal</p> <p>Requestor: Henry I. Langston, Director Florida Crippled Children's Commission, Tallahassee</p> <p>Issue date: 09/28/62</p>
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have goods for storage. When compelled, on account of the conduct of the consignee, to store them, it exacts only the storage fees provided by that tribunal, which regulates its business as a common carrier. If it cannot be taxed as a common carrier, (municipal taxes not permitted against common carriers) a mere incident to its business in such capacity cannot be segregated from its business in its entirety and made subject to an occupation tax.

This seems to be a reasonable rule to be applied here.

The above stated question is answered in the affirmative. Care must be exercised to apply the rule announced in the above *Arlington v. Central of Georgia Railway Co.* case when determining whether or not the transaction of storage is unconnected with the business of hauling and trucking.

062-122—September 28, 1962

**CRIPPLED CHILDREN'S COMMISSION  
EXPENDITURE OF FUNDS FOR TREATMENT AND  
CORRECTION OF DEAFNESS—CH. 391; §391.01, F. S.**

To: *Henry I. Langston, Director Florida Crippled Children's Commission, Tallahassee*

**QUESTION:**

**May the loss of hearing or deafness, due to accident, disease, congenital deformity or any other condition, be construed to be an impairment or crippling of the physical functions or movements of a child for which care or treatment may be provided by the Florida crippled children's commission?**

Chapter 391, F. S., is an act creating the Florida crippled children's commission to provide care, treatment and hospitalization of crippled children. Section 391.01, F. S., defines a crippled child as any person of normal mentality under the age of 21 years whose *physical functions or movements are impaired by accident, disease or congenital deformity* regardless of whether or not such impaired physical functions or movements are due to an orthopedic condition; it shall *include children suffering from any disease or condition which is likely to result in a crippling condition*. The *services, duties and functions of the commission are not limited to orthopedic cases*.

Dorland's medical dictionary, 23rd Ed., defines "deafness" as a lack or loss, complete or partial of the sense of hearing. It continues with numerous definitions as to various types of deafness which are generally attributed to accident, disease, congenital or some other physical condition.

In the same dictionary we find the following definitions:

"Accident"—an unforeseen occurrence, especially one of injurious character; an unexpected complicating occurrence in the regular course of a disease.

"Disease"—a definite morbid process having a characteristic train of symptoms. It may affect the whole body or any of its parts, and its etiology, pathology, and prognosis may be known or unknown.

"Congenital"—existing at birth.

Black's law dictionary defines the word *crippling* as the equivalent of words "physical disability."

Webster defines the word *cripple* to deprive of strength, activity or capability for service.

In Words and Phrases, Vol. 10, we find:

*Crippled child*—"A crippled child . . . is a person under 21 years of age who, by reason of a physical defect or infirmity whether congenital or acquired by accident, injury or disease, has been deprived of strength, activity, or capability for services or use, in any part of the human body."

In 24B C.J.S., p. 718, we find among other things the following:

The word crippled has been distinguished from maim and the word crippling has been held to be the equivalent of physical disability.

In view of the foregoing it is my opinion that the definition of what shall constitute a crippled child as defined by the legislature in §391.01, supra, may include any child whose physical functions or movements are impaired by deafness.

It might also be noted that for a number of years, the commission has been providing facilities and services for the treatment of children who are diagnosed as having a crippling or impaired physical condition due to harelip, cleft palate, congenital cataract, cerebral palsy and cardiac condition, as well as the amputee, orthopedic and plastic cases; such services have apparently been rendered with the blessings or approval of the Florida legislature through the biennial appropriations to the commission. Hence, from a layman's point of view it would appear to me that either partial or total deafness would result in a sufficient physical disability to justify the commission expending funds for the purchase of equipment and services for the prevention and treatment of deafness. (See AGO dated Sept. 19, 1935, to the Florida crippled children's commission, p. 502, 1935-36 biennial report of the attorney general.)

Your question is answered in the affirmative.

062-123—October 1, 1962

#### BEVERAGE LAW—ADMINISTRATION

SALE OF INTOXICATING BEVERAGES—ZONING BY MUNICIPALITIES—§§561.44 (1), (2), 561.34 (1) (c), (d), F. S.

To: Mrs. Lorena Spivey, City Clerk, Okeechobee

#### QUESTION:

May a municipality enact a zoning ordinance prohibiting the sale of intoxicating beverages within certain designated areas?

Section 561.44 (1), F.S., provides as follows:

(1) Incorporated cities and towns are hereby given the power hereafter to establish zoning ordinances restricting the location wherein a vendor licensed under §561.34 may be permitted to conduct his place of business and no license shall be granted to any such licensee to conduct a place of business in a location where such place of business is prohibited from being operated by such municipal ordinance; provided, however, such powers shall not apply to vendors licensed under §561.34 (1) (c) and (d).

Section 561.34 (1) (c) and (d), F.S., relates to vendors of malt beverages containing alcohol of more than 1% by weight for consumption off the premises only and vendors of beverages con-