

Opinion No. 46-4935

August 2, 1946

BY: C. C. McCULLOH, Attorney General

TO: J. V. Gallegos Assistant District Attorney Ninth Judicial District Tucumcari, New Mexico

{*259} In your letter of July 25, 1946, you set forth the following fact situation:

The settlement of San Jon was officially incorporated as a village on June 10, 1946. Some residents of the village have paid their occupation taxes to the county clerk, basing them on the amount provided for by law to be collected by counties. Some of these payments to the county may have been made prior to {*260} June 10 and others were made after that date. Some of these payments cover occupation license taxes for the fiscal year beginning July 1, 1946. It appears, also, that the liquor store in San Jon has paid its license fee for the fiscal year beginning July 1, 1946, to the county. No ordinances have been enacted by the village as yet mentioning occupation tax or liquor license fees.

Based upon these facts, you request our opinion as to whether or not the village of San Jon is entitled to and should be reimbursed by the county for all money paid for occupation licenses and liquor licenses covering the period of the fiscal year beginning July 1, 1946.

With reference to the liquor license. Section 61-402 of the 1941 Compilation provides that municipalities are empowered **by duly adopted ordinance** to impose an annual municipal license tax for the purpose of operating within such municipality as retailers, dispensers or clubs. This section also provides that "The amount of such license tax and the dates and manner of payment thereof shall be fixed on or before the first day of June of each year by the ordinance imposing the same."

With reference to occupation taxes. Sections 14-3807 and 14-3808 set forth the powers of the governing bodies of villages to impose occupation taxes and to license and regulate certain enterprises.

Since the village authorities have not yet enacted ordinances mentioning occupation taxes or liquor license fees, the license fees and occupation taxes heretofore collected by the county are county funds and remain county funds, irrespective of the fact that those license fees and occupation taxes cover the fiscal year beginning July 1, 1946. Furthermore, I am unable to find any statutory authority which authorizes a county to reimburse the village in cases of this type.

Considering what has been stated above, I am of the opinion that the village of San Jon is not entitled to and cannot be reimbursed by the county for money already paid to the

county by residents of San Jon for occupational taxes and liquor license fees covering the period of the fiscal year beginning July 1, 1946.

By WM. R. FEDERICI,

Asst. Atty. General