

Opinion No. 50-5287

March 3, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: J. D. Hannah State Comptroller Santa Fe, New Mexico

{*136} I have your letter of February 13, 1950, asking whether or not, and upon what terms and conditions the City of Hobbs has the right to examine school tax returns for the purpose of seeking information in connection with the assessment of their municipal occupation tax.

Section 14-3815 of the 1941 Compilation, in so far as is pertinent, provides:

"A. In determining the actual gross volume of business done by any person, firm, corporation or business, the governing body of any city, town or village, acting through its city clerk or other similar officer, may require of the bureau of revenue, a certificate showing the gross volume of business claimed to have been done by such person, firm, corporation, or business during the year or years under investigation or examination, as may be reflected by the records and returns on file in such office or offices, and it is hereby made the duty of the bureau of revenue or any other state officer having such records, to furnish such certificate upon written request and payment of one dollar (\$ 1.00) for the report on each separate business requested by the clerk or other officer of the city, town or village."

It is the opinion of this office that the language of the above statute is explicit and needs no interpretation. No authority is granted to examine the records {*137} of the Bureau of Revenue. By the act, the bureau is authorized to issue a certificate showing the gross volume of business reported by the taxpayer, but is authorized so to do only upon written request, and upon payment of a fee of One Dollar for each business upon which a report is requested.

In your letter you quote a portion of Section 14-3815, supra, which you contend authorizes the examination of these records. If you will read the portion of the act immediately preceding the part which you quote, you will note that it relates only to the city's occupation tax records, together with such information as may have been received by certificate from the Bureau of Revenue in the manner above stated. May I call your attention to Section 76-1437 of the 1941 Compilation which regulates the inspection of taxpayers' returns. The first part of the section prohibits the divulgence except in accordance with judicial order or as otherwise provided by the act. Nowhere in this section is there any provision which by any stretch of the imagination would allow inspection of these records or divulgence of information contained therein to any city or official thereof.

Louis C. Lujan, Attorney for the Bureau of Revenue, has asked me to also advise as to whether or not you, as State Comptroller, have any authority to examine these records. This matter is also regulated by Section 76-1437 of the 1941 Compilation. In this connection, the pertinent part of the section reads as follows:

"Nothing herein contained shall be construed to prohibit * * * the inspection by the attorney-general or other legal representative of the state of the report or return of any person by or against whom an action or proceeding is contemplated or has been instituted under this act."

Under this provision, such records may be examined only when a proceeding is instituted or contemplated against an individual for violation of the Emergency School Tax Act. It would not apply where the violations in question were of the occupation tax act of a municipality.

In addition, the inspection is limited to that of the attorney-general or other **legal** representative of the state. Legal representative in this sense, does not refer to the State Comptroller, but rather to the officers who are empowered to prosecute for violations of the School Tax Act.

The only possibility that I can envision wherein you would have a right to inspect these records would be in the course of an audit of the School Tax Division of the Bureau of Revenue. In this case you would not be permitted to make this examination if the same data were available from another source. The validated receipts issued by that division would show exactly the same information, and would preclude you from examining the original report of the taxpayer.

It is, therefore, my conclusion, that under no circumstances do municipal officials or the State Comptroller have the right to examine reports or returns of taxpayers under the provisions of the Emergency School Tax Act.