

Opinion No. 51-5343

March 29, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Gen. Chas. H. Corlett Commissioner, Bureau of Revenue State of New Mexico
Santa Fe, New Mexico

{*21} I am in receipt of your request for an opinion as to whether the school tax on commercial printing shall be charged at the rate of 2 1/4 %. You state further, in a letter attached to your letter of inquiry, that for several years the various daily and weekly papers, as well as commercial printing plants throughout the State, have been paying 2 1/4 % for commercial printing. The tax was collected on the following basis: 1/4 % manufacturer's tax and 2% sales tax.

The pertinent statutory provisions are as follows:

76-1404, **Par B:** "At an amount equal to 1/4 of 1% of the gross receipts of the business of every person engaging or continuing in each or any or all of the businesses of manufacturing, smelting, refining,"

Par. D: "At an amount equal to 2% of the gross receipts of the business of every person engaging or continuing in the business of selling at retail of goods, wares,"

Par. I: "At an amount equal to 2% of the gross receipts of any person engaging or continuing in any of the following or similar businesses: laundries, . . . , publication of newspapers and magazines (but the gross receipts of the business of publishing newspapers or magazines shall include only the amounts received for the sales of advertising space), bill boards"

Section 76-1415 of the New Mexico 1941 Compilation states as follows:

"(h): The proceeds from the sale and circulation of newspapers and magazines, provided, {*22} however, that this exemption is not applied to the sale of advertising space in such publications."

The question arises as to whether commercial printers are manufacturers or retailers.

Commercial printing, as defined in Words and Phrases, Vol. 3, 2d Series, page 268, reads:

"A company organized to conduct the business of book and job printing, engraving, electrotyping, and lithographing, whose capital is invested in the prosecution of that business, and which manufactures on orders only, is a manufacturing company."

An opinion of the Office of Attorney General, No. 3093 dated April 11, 1939, states:

"It is my opinion that commercial printers and the printing business is not a retail business for the reason that each printing job must come to the shop on Order. The shop then manufactures the product according to the specifications of the Order, and is therefore a manufacturing business."

It is, therefore, my opinion that commercial printing should be taxed under the provisions of Section 76-1404, Par. B, at 1/4 of 1% of the gross receipts of the business and not at 2% as was indicated that is being charged by the Bureau of Revenue at this time. The sole exception is the printing of advertising space in newspapers and magazines which shall be charged at the rate of 2% of the gross receipts as set forth in Section 76-1404, Par. I. Under no circumstances, however, should 2 1/4 % be charged against daily and weekly papers and commercial printing plants either for the sale of advertising or for printing.