

Opinion No. 54-5899

February 4, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller State Capitol Building Santa Fe, New Mexico

{*337} We are in receipt of your request for an opinion concerning whether or not the County Commissioners may, pursuant to Section 61-403, N.M.S.A., 1941 Compilation, specify by resolution a county liquor tax in the amount of \$ 100.00 for one type of license and \$ 50.00 for a specified licensee, and the second question as to whether or not a county license fee once paid can be adjusted or reduced to effect a refund to the license holder.

{*338} Section 61-403 reads as follows:

"The boards of county commissioners of counties composing local option districts are hereby empowered, by resolution duly adopted, on or before the first day of June of each year to impose an annual, non-prohibitive license tax upon the privileges of persons holding state licenses under the provisions of this act to operate within such counties (outside of the municipalities contemplated by section 1102 (§ 61-401) hereof) as retailers, dispensers or clubs. The amount of such license tax and the dates and manner of the payment thereof shall be fixed by the resolution imposing the same: Provided, that in case such county permits the payment thereof in installments, no bond shall be required to secure the payment of the deferred installments, but that the remedy for the collection thereof shall be that provided in section 1105 (§ 61-404) of this Act."

It is clear from this that a resolution duly passed would impose a license fee upon all liquor licensees and the language under non-prohibitive license tax would impose upon the county commissioners the duty of ascertaining what would be the amount of license tax which would be just and reasonable. Section 61-502 reads as follows:

"In any local option district any person who is the proprietor or owner of any hotel, restaurant or club, as herein defined, or any person qualified under the terms of any ordinance of any municipality or resolution of any board of county commissioners or any other person who is not disqualified by provisions of this act, may apply for, and if found qualified by the licensing authorities, whose duty it is to make a finding concerning such qualifications, shall be issued a dispenser's license for the sale of alcoholic liquors."

It is clear from the reading of the two sections that different type licenses are recognized within the state and § 61-403 indicates that a different tax may be imposed against each of these types of licenses. That is to say, that a license tax against a retailer may be prohibitive against a dispenser or vice versa. We believe that the Board of County

Commissioners may fix a license tax in varying amounts by resolution against any one of the designated types of licenses, but no individual license holder may be exempted or have his license reduced as such a provision, say a country club or Elks Lodge, would be discriminatory against members of the same class and would be unconstitutional.

Opinion of the Attorney General No. 5084, copy of which is attached hereto, holds that the monies collected from this tax must be credited to the General Fund of the County, and by reason of such credit upon collection there is no method of refund to any license holder or reduction of the license fee prior to its payment by reason of the discriminatory features therein.

We sincerely hope that this answers your inquiries.

By: Fred M. Standley

Assist. Attorney General