

**Opinion No. 55-6096**

February 4, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Richard F. Rowley, District Attorney Ninth Judicial District, Clovis, New Mexico

You have requested the opinion of this office relative to whether or not a municipal corporation has the right to license and regulate a private club in the State of New Mexico.

As we view your request, the appropriate section of the New Mexico Statute involved, is § 14-42-8, N.M.S.A., 1953 Compilation, which section gives municipalities the power to license and regulate certain enumerated endeavors and contains the following phraseology:

" . . . and license and regulate all occupations, professions, trades, pursuits, corporations and other institutions and establishments, articles, utilities not heretofore enumerated in this section of whatever kind and character, provided that as to such occupations, professions, trades, pursuits, corporations and other institutions and establishments, articles, utilities and commodities not specifically enumerated in this section, the governing body of the city, town or village, shall, by ordinance declare that the licensing or regulation thereof is conducive to promotion of the health and general welfare of such city, town or village; and shall have the power to fix the license to be paid thereon or therefor, and may impose a separate license on each place of business conducted or maintained by the same person, firm, association or corporation . . . ."

This section of the statute goes further than does § 14-42-7, N.M.S.A., 1953, which section gives cities, towns and villages the power to impose an occupation tax, in that the legislative intent appears to be one of licensing in the exercise of the police power for the promotion of the health and general welfare of the community.

Were the City of Clovis attempting to assess an occupation tax against private clubs, the argument immediately appears that the enumerated matter in § 14-42-7 applies to businesses generally and a private club may or may not be engaged in business depending upon the particular factual situation.

However, in the application of § 14-42-8, pertaining to licensing and regulation, we have a different problem than one involving occupation tax.

It is therefore the opinion of this office that there is expressed therein a legislative intent to allow municipalities to license and regulate any "pursuits, corporations and other institutions and establishments" providing the governing body of the city, town or village shall by ordinance declare that the licensing and regulation is conducive to the promotion of the health and general welfare of the community.

If the City of Clovis meets this qualification by ordinance, we see no reason why a private club cannot be regulated subject, of course, to the qualification that each case stands upon its own particular factual situation.

By: J. A. Smith

Assistant Attorney General