

Opinion No. 56-6381

February 6, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Roswell, New Mexico

We have your request of January 26, 1956, in which you request an opinion from this office upon the following fact situation:

A man contemplates holding monthly auctions in Chaves County. This man owns and operates a permanent business in the State of New Mexico outside of Chaves County. Some of the goods to be sold are to be shipped from the original place of business in New Mexico and other goods will be shipped directly to Chaves County from various factories, but such goods will not be sold in their original package. All warranties, complaints, service facilities and the like will be handled through the original place of business in New Mexico.

Your question is: Under what statutory provision should this place of business be taxed. In other words should an occupational license tax be charged under §§ 60-1-1--60-1-14, N.M.S.A., 1953, or should an itinerate vendor's tax be charged under the provisions of §§ 60-2-1 to 60-2-22, N.M.S.A., 1953.

From the situation above outlined we are of the opinion that there is an attempt to establish a type of branch operation and not an itinerate vendor's operation. It does not seem to be a temporary or transitory type of business. Therefore, we are of the opinion that an occupation license tax should be charged under the provisions of §§ 60-1-1 to 60-1-14, N.M.S.A., 1953.

You also ask if it would make any difference if the owner of this proposed business took a more or less permanent lease on a building in Chaves County, leasing it for the dates on which the proposed auctions are to be held. We think if this type of lease was made, it would only add strength to the fact that the man was attempting to establish a branch operation in Chaves County for his other permanent establishment in the State of New Mexico.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General