

Opinion No. 56-6386

February 9, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

We have your letter of February 1 in which you request an opinion from this office on the following questions:

Is a person who manufactures and sells farm equipment required to obtain an occupation license under the provisions of § 60-1-1, N.M.S.A., 1953?

Is a person who manufactures bricks made of the raw products taken from New Mexico soil and who sells the bricks required to obtain an occupation license under § 60-1-1, N.M.S.A., 1953?

Since each of the questions deals with the same basic question, namely, is a manufacturer required to obtain an occupation license under § 60-1-1, N.M.S.A., 1953, we shall treat the request as one question.

Section 60-1-1, N.M.S.A., 1953, requires a license of all "dealers in merchandise other than liquors." So the question resolves itself as to whether a manufacturer is a dealer in merchandise so as to be required to secure a license under this statutory provision.

Generally, the case makes a distinction between a dealer and a manufacturer.

"A dealer is one who deals, divides, distributes, delivers or does business, a trader, trafficker, middleman, or a person making a business of buying and selling goods, as distinguished from a manufacturer thereof, without altering their condition." *Charles E. Russell Co. v. Carroll*, 74 S.E. 2d 685, 194 Va. 699.

For other cases making the same distinction between "dealer" and "Manufacturer", see 11 Words and Phrases, pages 157 through 159.

It should also be noted that under the provisions of §§ 60-1-1 to 60-1-14, N.M.S.A., 1953, which set up the provisions for a county occupational tax, that the tax is assessed against "dealers in merchandise, real estate agents and collectors, hotels, inns, restaurants, livery or feed stables, stage lines, and amusement places," but at no place in the statute is there mention of manufacturers.

From these statutory provisions, it would appear that the Legislature intended to impose an occupation tax on the doing of business within the county and that they did not intend actually to make a distinction between "dealers" and "manufacturers", and that

the term "dealers in merchandise" is used here to include any type of business which sells objects of commerce. We call your attention to Opinion No. 5770, a copy of which is enclosed herewith, in which this office held that an alfalfa mill would be required to pay the occupation tax under this statutory provision.

In view of the above, we are of the opinion that there was no intent to make a distinction between the words "dealers" and "manufacturers", and that "dealers", as used in the provision of § 60-1-1, includes "manufacturers" and, therefore, would have to pay the occupation tax provided in this particular section.

By: Paul L. Billhymer

Assistant Attorney General