

## **Opinion No. 58-156**

July 24, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mr. Walter R. Kegel, District Attorney, First Judicial District, Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

Do such establishments as trucking businesses and contracting businesses who render service only or service in conjunction with the sale of tangible personal property come within the purview of the county occupation tax statutes?

#### CONCLUSION

The tax may be imposed, but only to the extent tangible personal property is sold, and then only as measured by the amount of sales of tangible personal property.

### **OPINION**

#### ANALYSIS

In Opinion of the Attorney General No. 57-73, rendered April 15, 1957, we held that the occupation tax under Sec. 60-1-1, N.M.S.A., 1953 Comp., could be imposed on a ski lodge if the lodge sold merchandise, i.e., the lodge was then a dealer in merchandise. It is true Sec. 60-1-3 was cited, but the reasoning under Sec. 60-1-1 seemed to be independent of Sec. 60-1-3, and we think correctly so. It is our opinion that if the contractor or trucker sells tangible personal property, he must pay the tax within the above reasoning.

On the other hand, if no tangible personal property is sold, Sec. 60-1-1 doesn't apply. And further, to the extent the statute would be applicable to your examples, the amount of the tax would be measured solely by the amount of sales of goods, giving no consideration to amounts received for services rendered. The Legislature used the term "sale", and we assume this was used in its common law sense, i.e., a transfer of the property in a personal chattel for value, 46 Am. Jur., Sales, Sec. 2.