

Opinion No. 59-09

February 9, 1959

BY: FRANK B. ZINN, Attorney General

TO: New Mexico Contractors' Licensing Board Santa Fe, New Mexico. Attention: L. H. Hightower, Member Alamogordo, New Mexico

A municipality may levy an occupational or license tax upon contractors even though the State also licenses them and collects license fees.

OPINION

{*14} This is in answer to your opinion request which essentially asked the question:

May a city occupation tax be assessed against contractors licensed by the State of New Mexico?

It is my opinion that an occupational tax may be levied by a municipality upon contractors, even though they pay a license fee and are licensed by the State.

You call to my attention the fact that the City of Alamogordo is imposing an occupation tax, even though individual contractors are licensed under State authority, and you expressed the view that it does not seem proper that a contractor should be licensed under State authority and also be required to obtain an occupational license under the municipal authority.

I assume that the Alamogordo occupational tax is levied in accordance with Section 14-42-8 N.M.S.A., 1953 Comp. which permits cities, towns and villages to impose a regulatory tax on all occupations, professions, trades, etc., when the governing body of the municipality has by ordinance, declared that the licensing and regulation of the occupation is conducive to the promotion of the health and general welfare of that municipality.

I am aware of the general rule of law which holds that a municipality {*15} or other subordinate political body may not impose a license fee where the State has retained the exclusive right to levy such license fee, nor enact a licensing measure covering a subject matter fully covered by the general laws of the State. 53 C.J.S., Section 11, page 491. In this case the general rule does not apply, since the Contractors' Licensing Act at 67-16-15 N.M.S.A. 1953 Comp., states:

"Nothing herein contained shall be construed as preventing any municipality from collecting local occupation taxes or license fees under the provisions of any local ordinance, but same may be assessed and collected from contractors licensed

hereunder, in addition to the license fees herein provided for, by any municipality in which construction work is carried on by any contractor licensed hereunder."

In view of the explicit statute quoted, it cannot be argued that the State has pre-empted the licensing field with respect to contractors.

Fred M. Calkins, Jr.