

Opinion No. 62-117

September 20, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Luis L. Fernandez, Chief, Local Government Div. Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

QUESTION

The Village of Espanola has recently annexed certain contiguous territory after the presentation of a petition by persons in the area seeking annexation. Prior to the annexation, Espanola had, pursuant to Section 14-42-25, N.M.S.A., 1953 Compilation enacted a municipal sales tax ordinance.

QUESTIONS

1. Are businesses located within the recently annexed areas subject to the ordinance which imposes a municipal sales tax?
2. If so, when do such businesses become subject to the municipal sales tax levy?

CONCLUSIONS

1. Yes.
2. When the Resolution by the local governing body, together with a plat of the annexed territory, has been filed in the office of the county clerk.

OPINION

ANALYSIS

Since the annexation in question was accomplished pursuant to a petition for annexation by the owners of property in the contiguous area, the answer to each of your questions is to be found in Section 14-6-11, N.M.S.A., 1953 Compilation. This Section provides as follows:

"Whenever a petition asking for the annexation of contiguous territory to any city, town or village shall be presented to the city council of any city or board of trustees of any town or village, which petition is signed by owners of a majority of the number of acres in such contiguous territory sought to be annexed, accompanied by a survey and a plat of the contiguous territory sought to be annexed, it shall be the duty of the city council or board of trustees of any such city, town, or village to whom said petition is so presented

to express by resolution their consent or rejection to the annexation of such contiguous territory. In the event that such resolution shall consent to the annexation of such territory, a copy of the resolution, together with a copy of the plat of the territory so annexed, shall be filed in the office of the county clerk of the county in which said municipality is situate, and **from and after such filing, the said contiguous territory shall be included in and a part of said municipality for all purposes.** (Emphasis added).

Since in this instance the local governing body of the Village of Espanola by resolution expressed its consent to the annexation, the annexation either became or will become effective **for all purposes** when this resolution together with a copy of the plat of the territory so annexed was or is filed in the office of the county clerk.

The powers of a municipality, including the power of taxation, extend throughout its corporate limits. 2 **McQuillin, Municipal Corporations**, Section 7.48. See Section 14-42-25, N.M.S.A., 1953 Compilation. Thus the municipal sales tax ordinance (No. 132) became (or will become) effective at the same time as the territory was (or will be) validly annexed. See **Commissioners of Sinking Fund of Louisville v. Howard**, Ky., 148 S.W. 2d 340. And this is true even though the annexed territory may not yet be enjoying all of the benefits of city government. **Specht v. Louisville, Ky.**, 58 S.W. 607. It should be noted that since the incidence of this particular tax is on the seller (who, at his option, can pass it on to the buyer), the gross receipts of businesses in the annexed territory are subject to the municipal tax from the effective annexation date.

In view of the type of tax here involved, we do not directly encounter any problem concerning the legality of imposing a property tax on annexed territory which tax money is expended to pay **prior** obligations of the municipality. In this regard see 2 **McQuillin, Municipal Corporations**, Section 7.48; **Cox v. Albuquerque**, 53 N.M. 334, 207 P.2d 1017; Attorney General's Opinion 60-55.