

Opinion No. 63-104

August 15, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Earl R. Cooper Executive Secretary State Bar of New Mexico 130 South Capitol Santa Fe, New Mexico

QUESTION

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Does the New Mexico Emergency School Tax apply to the gross receipts derived from:

- (a) Sales of tangible personal property and services to the State Bar of New Mexico;
- (b) activities of the State Bar itself, such as the sale of publications, advertising in publications, and the bulletin binders?

CONCLUSIONS

- (a) sales of tangible personal property are exempt, but sales of services are taxable.
- (b) No.

OPINION

{*225} ANALYSIS

The State Bar of New Mexico is not a mere professional association of attorneys. It consists, of course, of attorneys admitted to practice before the bar of the Supreme Court of New Mexico, and was created by the Supreme Court of New Mexico in the exercise of its inherent power to regulate and define the practice of law within the state of New Mexico. But, the State Bar performs a public function. As stated **In re Gibson**, 35 N.M. 550, 557, 4 P.2d 643 (1931):

"Lawyers as a class take a large part in the administration of justice. In the active practice of their profession immemorially they have exercised a great and enduring influence upon the business, social and political life of the people. Under express mandate of the Constitution Justice of the Supreme Court, district judges, and the Attorney General must be selected from among the members of the bar."

In the interests of the furtherance of the administration of justice, the legislature created what is called an "integrated" bar. It did so by creating a Board of Commissioners of the State Bar for the regulation, under the control of the Supreme Court, of the practice of

law, and of admission to practice. See Section 18-1-1, et seq., N.M.S.A., 1953 Compilation. Each member of the State Bar is required to pay an annual license fee, which is appropriated to the Board of Commissioners. It is the Board of Commissioners, that, under the Supreme Court, regulates the business of the State Bar, and states and implements its policies. When sales are made to the State Bar, they are actually made to the Board of Commissioners, and the activities of the State Bar are, in legal contemplation, the acts of the Board of Commissioners.

The Board of Commissioners is a governmental agency created for the regulation of the bar of this state. **In re Gibson**, supra. That being the case, the gross receipts of sales of tangible personal property to it are exempt from {*226} the school tax under Section 72-16-5, N.M.S.A., 1953 Compilation. There is no exemption, however, for the gross receipts derived from the sale of services to the State Bar, and such sales are taxable.

The activities of the Board of Commissioners through which it occasionally derives money, such as the sale of advertising space in the State Bar Bulletin, do not result in private profit; the money is devoted entirely to the governmental purposes of the Board. No tax exempt status would necessarily result from mere nonprofit activities. The important factor is that the activities of the Board are governmental activities which the school tax act does not purport to tax. In our opinion, therefore, the receipts of the State Bar from bar activities, and from the sale of publications and advertising, are not subject to the school tax.

By: Norman S. Thayer

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