

Opinion No. 63-22

March 19, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Luis L. Fernandez Local Government Division Department of Finance and Administration Santa Fe, New Mexico

QUESTION

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1. Must trailer courts located outside the boundaries of an incorporated municipality acquire a county occupation license?
2. Are auctions conducted outside the boundaries of an incorporated municipality subject to a county license tax?
3. Are livestock auctions conducted outside the boundaries of an incorporated municipality subject to a license tax?

CONCLUSIONS

1. No, but see analysis.
2. See analysis
3. See analysis

OPINION

{*45} ANALYSIS

(1) New Mexico Statutes Annotated 60-1-1 (1953) allows counties to require an occupation license for "dealers in merchandise". In Opinions of the Attorney General, 63-10, February 1963, and 59-32, April 1959, we defined the term "dealer in merchandise" as one who deals, distributes, delivers, a trader, a trafficker, or middleman or person who makes a business of buying and selling goods which merchants normally sell at wholesale or retail.

In the opinion of the Attorney General cited above, we also held that one who merely performs a service is not a dealer in merchandise. Unless a trailer court engages in some activity other than merely renting trailer space it is not subject to a county occupation license tax under Section 60-1-1 (1953).

New Mexico Statutes Annotated 60-1-3 (1953) provides in part:

"Keepers of hotels, inns, or restaurants, where food or lodging is provided, and whose annual receipts exceed one thousand dollars (\$ 1,000) and do not exceed two thousand dollars shall pay a license tax. . ."

Is a trailer court a hotel or inn where food or lodging are served? We have found no cases which so hold.

In normal usage, the words "hotel" and "inn" are synonymous. See Annotations at 19 A.L.R. 517, 53 A.L.R. 988.

Webster's New Third International Dictionary defines "hotel" as:

"A house licensed to provide lodging and usually meals, and entertainment for the public. A building of many rooms chiefly for overnight transients."

Black's Law Dictionary defines "hotel" as:

"An inn; a public house or tavern; a house which is held out to well-behaved members of the travelling public, who are willing to pay reasonable rates for accommodations, as a place where they will be received and entertained as {*46} guests for compensation, and will be furnished with food, drink, and lodging, and everything which they have occasion for while on their way."

In **Weiser v. Albuquerque Oil and Gas Co.**, 64 N.M. 137, 325 P. 2d. 720 (1958) our Court said that neither the physical plant nor the name under which an establishment operates determines its status as a hotel. The facilities available and the services offered are the determinative factors.

The Court then outlined the services which the establishment in question offered. The establishment had guestrooms, a registration desk, a telephone switch board, concession stands, a restaurant, maid service, telephone service, bellboy services, room service and laundry service. These are the facilities that hotels usually offer.

We believe that ordinarily, a trailer court will not come within the definition of a hotel or inn. There are probably many trailer courts which provide many of the services which hotels customarily furnish. They do not, however, furnish rooms for their guests, nor are they usually considered to be hotels. We must, therefore, conclude that trailer courts should not usually be subject to County occupation license taxes.

(2) New Mexico Statutes Annotated 67-13-6 (1953) gives counties the authority to license **jewelry** auctions which are held within the county but outside the boundaries of incorporated municipalities.

If any other auction business is to be subject to a county occupation tax, the authority for the tax must be found in Section 60-1-1 (1953).

If the auction is conducted so that title to the goods sold passes directly from the seller to the purchaser, and the auctioneer merely performs the service of selling the goods for a commission, the auction operation is not subject to an occupation license tax under Section 60-1-1, as the auctioneer is merely performing a service.

If, however, the person who conducts the auction purchases the goods, or is the owner of the goods which he then auctions, he is a dealer in merchandise within the meaning of Section 60-1-1 and therefore subject to the occupation license tax.

(3) New Mexico Statutes Annotated 47-10-1 through 47-10-10 (1953) deal with cattle auction rings. Section 47-10-2 vests in the Cattle Sanitary Board the power to license cattle auction rings.

New Mexico Statutes Annotated 47-8-32 (1953) vests in the Sheep Sanitary Board the power to license sheep auction rings.

Neither Section 47-10-1 nor Section 47-8-32 give counties the power to license sheep and cattle auctions. If authority for the licensing of livestock auctions by counties is to be found, we must once again look to Section 60-1-1. What we have said in reference to auctions generally under Section (2) of this opinion, supra, is applicable to livestock auctions as well as other auctions. Therefore, they are not subject to such a tax either.

By: Joel M. Carson

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