

Opinion No. 65-126

July 8, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Thomas Overstreet, Assistant Attorney General

TO: Alfonso G. Sanchez, District Attorney, County Courthouse, Santa Fe, New Mexico

QUESTION

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Can the county or city clerk refuse to issue an occupational license on the grounds that the licensee has failed to pay property taxes on personal property which is being used for the conduct of business involved?

CONCLUSION

No.

OPINION

{*212} ANALYSIS

In accordance with Section 60-1-5, N.M.S.A., 1953 Compilation, the clerk must issue a license if the provisions of that statute are complied with by the applicant. The statute makes no reference to the paying of personal property taxes as a pre-requisite and it cannot be inferred {*213} that such requirement exists. Having complied with the statute, the applicant must be issued a license, and thus the question asked must be answered in the negative. A possibility exists, however, whereby the governing body of a city, town or village may deny the issuance of an occupational license under these circumstances. This appears in Section 14-42-9, N.M.S.A., 1953 Compilation, which reads:

The legislative or governing bodies of cities towns and villages may for the purpose of regulation, refuse to issue licenses when it may deem it for the best interest of the public; provided however, that no license shall be refused without first giving the person, firm or corporation so applying therefore an opportunity to be heard. If, upon such hearing before the governing body of such city, town or village, a majority of such governing body present at such hearing be of the opinion that it be for the best interest of the public, such license may be refused.

Thus, if the governing body mentioned so chooses, it could hold a hearing and refuse to issue the occupational license by deciding it was for the best interest of the public to deny a license to one delinquent in personal property taxes. This provision has been

carried forward in Laws 1965, Chapter 300, Section 14-37-2, with the inclusion of the governing bodies of H class counties.

While we recognize the existence of this provision, it seems to be a regulatory device, and not a method of collecting delinquent taxes. It is mentioned as nothing more than a possibility. In general, the procedures for collecting delinquent personal property taxes are provided for in Sections 72-5-1 through 72-5-28, N.M.S.A., 1953 Compilation, and are not connected with the issuance of an occupational license in Section 60-1-5, N.M.S.A., 1953 Compilation.