

**Opinion No. 65-185**

September 22, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

**TO:** Mr. R. H. Storch, P.E., City Manager, County Court House, Truth or Consequences, New Mexico

**QUESTION**

QUESTION

Are National Banks exempt from ordinances imposing occupation taxes on banking corporations, trust companies, etc?

CONCLUSION

No.

**OPINION**

{\*303} ANALYSIS

Section 14-37-3, N.M.S.A., 1953 Compilation (P.S.) reads as follows:

"Occupation tax. -- A. A Municipality may impose an occupation tax and classify any occupation, profession, trade, pursuit, corporation and other institution and establishment, utility and business of whatever name or character, like or unlike, and not licensed as authorized in section 14-37-1, New Mexico Statutes Annotated, 1953 Compilation, or not licensed as authorized by any other law.

B. The occupation tax shall not exceed one dollar (\$ 1.00) per annum for each one thousand dollars (\$ 1,000) gross receipts of business done per annum except a minimum tax of five dollars (\$ 5.00) per annum may be levied. In lieu of an occupation tax assessed on the amount of gross receipts of business done per annum a municipality may impose an occupation tax in an amount not to exceed twenty-five dollars (\$ 25.00) per annum per business. A municipality may classify occupations and impose an occupation tax on each occupation. If a municipality chooses to classify for the purpose of levying an occupation tax, the classifications which shall be used are:

(1) Manufacturing;

(2) Utility;

- (3) Wholesale;
- (4) Retail;
- (5) Banking; and
- (6) Financial."

In this opinion it is assumed necessarily that the same standard for imposing the occupation tax is applied to both state banks and national banks. Such being the case there is no element of discrimination and no unfair burden is placed on national banks. As set forth in Opinion No. 62-146 Report of the Attorney General 1961-1962 at page 523 the purpose of the National Banking Act is to insure that National Banks will be treated equally with State Banks so that no undue burden is placed on the performance of a national bank's function. It was stated in the case of **Clovis National Bank v. Callaway**, 69 N.M. 119 as follows:

"The correctness of the court's ruling was recognized in *Guthrie v. Harkness*, 199 U.S. 148, 26 S. Ct. 4, 50 L. Ed. 130, 4 Ann. Cas. 433. See also *Bank of America Nat. Trust & Savings Ass'n. v. Douglas*, 70 App. D.C. 221, 105 F.2d 100, 123 A.L.R. 1266; *National Bank v. Commonwealth of Ky.*, 9 Wall. 353, 19 L. Ed 701. In *State v. {\*304} First Nat. Bank of Portland*, 61 Or. 551, 123 P. 712, 716, Ann. Cas. 1914B, 153, the principles are analyzed and a conclusion reached that national banks are not exempted from compliance with state legislation which does not impair 'their efficiency to perform the functions which they [are] designed to serve' and an escheat statute there under consideration was held not to do so. Although we do not perceive that the Oregon statute had a provision like Sec. 22-22-24, N.M.S.A., 1953, pocket supp., it did contain provisions whereby compliance by banks could be assured. With the right to obtain the information there must be a means of enforcing valid demands, and under the authorities we are clear that so long as the same are reasonable and do not interfere with the purpose of the banks' creation, or impair or destroy its functioning and are not in conflict with some paramount federal law, there is no valid objection that can be voiced to the provision. *Lewis v. Fidelity & Deposit Company of Maryland*, 54 S. Ct. 848, 292 U.S. 559, 78 L. Ed. 1425; *National Bank v. Commonwealth of Ky.*, supra; *State v. First National Bank of Portland*, supra; *First National Bank of Youngstown v. Hughes*, supra. *Roth v. Delano*, 338 U.S. 226, 70 S. Ct. 22

See also **Anderson National Bank v. Lockett**, 321 U.S. 233; and **Berylwood Investment Company v. Graham**, 43 Cal. App. 2d 659, 111 P. 2d 467.

To hold that a National Bank was exempt from payment of occupation license fees while a state bank was not so exempt would be to discriminate in favor of national banks against state banks and such a result was not contemplated or intended by the National Banking Act.

It is our conclusion therefore that a city may impose, within the limitations above set forth, an occupation tax on the business conducted by national banks.