Opinion No. 65-88

June 8, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Mr. James W. Musgrove, Assistant District Attorney, San Juan County, 112 No. Behrend, Farmington, New Mexico

QUESTION

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May the San Juan County Commissioners require those persons, Indians and non-Indians, who are operating a business in San Juan County on the Indian Reservation to purchase a County Occupational License for selling merchandise as provided in Section 60-1-1, N.M.S.A., 1953 Compilation.

CONCLUSION

No.

OPINION

*{*152}* ANALYSIS

Section 60-1-1 N.M.S.A., 1953 Compilation, provides for a license or occupation tax on dealers in merchandise. The amount of tax depends on the amount of annual sales. In Attorney General Opinion No. 57-252, issued October 4, 1957, this office ruled a county did have the right to collect an occupation tax from a person who has a trading store on an Indian Reservation within the county. We now must reverse that ruling.

On April 29, 1965, the Supreme Court of the United States released its decision in **Warren Trading Post Co. v. Arizona State Tax Commission.** This opinion controls your question. The **Warren** case arose because Arizona levied a tax of 2 percent on the "gross proceeds of sales, or gross income" of Warren, which did business with the Navajo Indians on the Reservation under a license granted by the United States Indian Commisioner pursuant to 25 U.S.C. Sec. 261 (1958 ed.) The Supreme Court held that the tax could not be imposed consistently with federal statutes applicable to the Indians on the Navajo Reservation.

In the opinion the Court pointed out that traders with Indians are controlled very closely by federal statutes and regulations, and, that the result of this close federal control is that no room remains for state laws imposing additional burdens upon traders. The

Court then concluded that the Arizona tax would put financial burdens on Warren or the Indians.

We know that anyone dealing in merchandise on an Indian Reservation must be licensed by the federal government. 25 U.S.C. Sec. 261, et seq. (1958 ed.) We therefore know that if the tax provided in Section 60-1-1, supra, is levied against dealers in merchandise on Indian Reservations it will be levied against a dealer licensed by the federal government. This, in itself, would seem to be reason enough for us to rule that the county merchandise occupation tax cannot be applied to dealers in merchandise on Indian Reservations. However, the **Warren** decision appears to contain two distinct aspects. The first is that the federal government has completely taken over the business of controlling Indian Traders and there is no room for a state to exercise *{*153}* control. The second is that the Arizona tax would impose a financial burden on the trader and the Indians contrary to the intent of Congress. Whether or not the tax imposed by Section 60-1-1, supra, would be a financial burden on the Traders or the Indians is debatable. However, in our opinion, the Court in the **Warren** case would have reached the same result regardless of the dollar amount or percent involved. The holding of the case seems pretty clearly to be that state may not impose, on Indian Traders, conditions with which they must comply in order to carry on their business on the Reservation.