

**Opinion No. 67-143**

December 7, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. George Richard Schmitt City Attorney P.O. Box 760 Las Cruces, New Mexico 88001

**QUESTION**

QUESTION

Are insurance companies and their agents operating a business or selling insurance within the City of Las Cruces, and thus subject to the City Occupation Tax under Section 14-37-3, N.M.S.A., 1953 Compilation (P.S.)?

CONCLUSION

No.

**OPINION**

{\*229} **ANALYSIS**

Section 14-37-3, N.M.S.A., 1953 Compilation, P.S., reads, in pertinent part:

"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 by the municipality as authorized by any other law."

Section 14-37-1, N.M.S.A., 1953 Compilation, P.S., reads:

"Licensing and taxation -- Business activities. -- The governing body may declare, by ordinance, that the licensing or regulation of a business **not otherwise exempt by law** is conducive to the promotion of the health and general welfare of the municipality and may impose a license fee and a separate license on each place of business conducted by the same person, firm, corporation or association. The license fee shall bear a reasonable relation to the regulation of the business." (Emphasis supplied).

Section 58-5-1 (E), N.M.S.A., 1953 Compilation, P.S., reads:

**"E. The payment of the taxes, licenses and fees provided for in this act shall be in lieu of all other taxes, licenses, and fees of every kind now or hereafter imposed**

**by this state or any political subdivision thereof or any** insurance company or agent thereof, excepting the regular state, county and city taxes on property located in the state of New Mexico; Provided, however, the word "agent" shall not be defined to include, for the purposes of this exemption, insurance adjusters or adjusting firms; Provided, further, the premium tax as levied in subsection C, notwithstanding the provisions of sections 58-15-15, 58-16-3 and 58-16-12 New Mexico Statutes Annotated, 1953 Compilation, is applicable to nonprofit hospital service and indemnity plans and physicians' service plans." (Emphasis supplied).

The "Act" mentioned in the above section is the Fire Protection Fund Act, Section 58-5-1, supra, et seq.

This office ruled on the identical question you raise in Opinion of the Attorney General No. 5038, dated June 11, 1947. The above exemption was law then, as it is now. Section 58-5-1(E), supra, is a specific section. It seems clear that the other two sections cited are general. Where two statutes conflict, the specific statute controls over the general statute. **State v. {\*230} Blevins**, 40 N.M. 367, 60 P. 2d 208 (1936).

Further, Section 58-5-1 (E) was amended to read as it presently does in 1967. Chapter 292, Laws of 1967. The last legislative enactment controls.

For these reasons, it is the opinion of this office that insurance companies and their agents are not subject to the city occupation tax.

By: Donald W. Miller

Assistant Attorney General