

Opinion No. 70-19

February, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable Arthur L. Dow New Mexico State Representative Legislative-Executive Bldg. Santa Fe, New Mexico 87501

QUESTIONS

QUESTIONS

1. In view of the purpose of the taxing powers of municipalities and the intent of the Legislature as set forth, can the City of Albuquerque charge contractors located in or doing business in the City of Albuquerque and licensed by the State of New Mexico an "Occupation Tax" at the rate of \$ 1.00 per annum for each \$ 1,000.00 of gross receipts of business done in that year?
2. Can the City of Albuquerque charge contractors an "Inspection Fee" in addition to the "Occupation Tax"?
3. Can either charge be a "revenue producer" on its face?
4. In view of the fact that barber shops are licensed and regulated by the State [§§ 67-14-1 thru 67-14-38, N.M.S.A., 1953 Comp.], can municipalities impose an "Occupation Tax" **or** a "license fee" against them?

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.
4. Yes.

OPINION

{*30} ANALYSIS

The detailed answers to these questions are contained in Attorney General Opinion No. 69-72, dated July 7, 1969. That opinion is accurate in all respects except in the area of the maximum "Occupation Tax" chargeable under Section 14-37-3, N.M.S.A., 1953 Compilation.

The proper interpretation of that section is that municipalities are granted the power to tax the privilege of doing business within those municipalities and they have the choice of imposing a tax at the rate of \$ 1.00 per annum for each \$ 1,000.00 of gross receipts of business done in that year **or** of imposing a flat-rate tax of not less than \$ 5.00 nor more than \$ 25.00 per business location per year. If the municipality chooses to employ the first tax rate, there is no maximum to the total tax that may be collected.

Municipalities may also charge contractors an "inspection" or "permit" fee. They derive this power from the last sentence in Section 67-35-53 (C.), N.M.S.A., 1953 Compilation. The charges under this section are intended to defray costs of inspection and must bear a reasonable relationship to such costs.

The two "charges" discussed above are two separate and distinctly different entities altogether. The first is the exercise of the power to **tax** for the sole purpose of **producing revenue** which is usually reserved by state government but was delegated by our State Legislature, to this limited extent, to municipalities. The second is an imposition of a **fee** to defray the costs of specific services rendered by the taxing authority and is a valid exercise of the cities inherent police power.

Your last question is answered by Attorney General Opinion No. 65-176, dated September 7, 1965.

{*31} That opinion states that businesses and occupations, such as barbers and contractors, which are recognized and licensed by specific statutory provisions are exempt from municipal licensing and regulation absent specific statutory delegation of such powers to municipalities. Therefore, such businesses and occupations are not subject to municipal licensing and regulation under Section 14-37-1, N.M.S.A., 1953 Compilation.

But, as stated before, **all** businesses and occupations are subject to the "Occupation Tax" which municipalities have the power to levy on the privilege of doing business within their borders under Section 14-37-3, N.M.S.A., 1953 Compilation.

By: F. Stephen Boone

Assistant Attorney General