

**Opinion No. 72-03**

January 12, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General Ronald Van Amberg,  
Assistant Attorney General

**TO:** Mr. Lawrence Pickett, Assistant District Attorney, Third Judicial District, County  
Courthouse, Room 207, Las Cruces, New Mexico 88001

April 11, 1972

The original Attorney General's Opinion No. 72-3 has been withdrawn and the following enclosed opinion substituted in its place.

**QUESTIONS**

QUESTIONS

Does Section 14-37-8, NMSA, 1953 Comp. (1971 P.S.) or any other New Mexico Law or Court decision prevent the Dona Ana County Assessor from inspecting the occupational license list of the City of Las Cruces?

CONCLUSION

Yes.

**OPINION**

{\*5} ANALYSIS

Section 14-37-8 (B) (C) provides in pertinent part:

Certificate of gross receipts -- Divulging information -- Exceptions -- Penalty. -- . . .

B. It is unlawful for any municipal official, employee, or agent to reveal to any individual other than another municipal official, employee, or agent engaged in municipal tax administration, or an employee or the bureau of revenue, any information about a taxpayer acquired as a result of his affiliation or employment with the municipality. No municipal official charged with keeping of such information shall be required to produce the information in any action or proceeding in court except on behalf of:

(1) the municipality in any action or proceeding under the provisions of sections 14-37-13 NMSA 1953 in which it is a party; or

(2) any party to an action or proceeding under the provisions of sections 14-37-1 through 14-37-13 NMSA 1953 when the information is directly involved in the action or proceeding. In either event, the court may require the production of and may admit in evidence only so much of the information as is pertinent to the action or proceeding.

C. Nothing contained in this section shall be construed to:

(1) prohibit delivery to a person or his authorized representative of a copy of any return or report filed in connection with his tax;

(2) prohibit the publication of statistics prepared so as to prevent the identification of a particular taxpayer's report or return and its contents;

(3) inspection by the attorney general or other legal representative of the state, county or municipality of the report or return of any person by or against whom action or proceeding is contemplated or has been instituted as authorized in sections 14-37-1 through 14-37-13 NMSA 1953; or

(4) prohibit the furnishing of the name, address and type of business of a taxpayer to other municipal employees engaged in administration and enforcement of municipal ordinances.

(5) inspection by the attorney general or an authorized representative of his consumer protection division, of the report or return, or other information on file, of any person, firm, partnership or corporation, by or against whom action, proceeding or investigation is contemplated or has been instituted as authorized in sections 49-15-1 through 49-15-14, as amended, NMSA 1953.

It is clear from the statute that the Dona Ana County Assessor, not being included in any of the categories exempted {\*6} from this provision, is not entitled to inspect any information about a taxpayer acquired by a municipal official on account of his employment with the municipality.

While there does seem to be a conflict between this statute and Section 71-5-1, NMSA, 1953 Comp., which gives citizens of this state the right to inspect public records, Section 14-37-8, **supra**, is a special statute which controls in case of conflict with the general statute, (see **State v. Blevins**, 40 N.M. 367, 60 P.2d 208 (1936).) Furthermore, Section 14-37-8, **supra**, was passed subsequent to the "right to know" statute (see **State v. Chavez**, 77 N.M. 79, 419 P.2d 456 (1966).)

While it could be argued that the substance of the recent amendment is misplaced and is not adequately described by the title of the statute (Art. IV. Sec. 16, of the New Mexico Constitution,) we are not prepared to declare a statute unconstitutional unless it is clearly so.

In conclusion, Section 14-37-8, **supra**, precludes the County Tax Assessor from obtaining information from municipal employees.