

Opinion No. 14-1265

July 3, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Louis Garcia, Mayor, Springer, New Mexico.

POWERS OF VILLAGE.

Powers of villages incorporated under provisions of Chapter 117 of the Session Laws of 1909.

OPINION

{*125} I am in receipt of your letters of the 23rd and 29th ult., in which, after stating that the village of Springer was incorporated under the provisions of Chapter 117 of the Session Laws of 1909, you ask the opinion of this office upon the following questions:

1st. Has the village of Springer the power, by ordinance, to compel all able-bodied men residing within the limits of the village to pay a street tax of \$ 3.00?

In reply to this question, I have to say that the legislature has not empowered a village to enact such an ordinance, but has, by Section 13 of the act of 1909, empowered a village to levy and collect assessments against lots and lands along and through which streets and alleys may pass in such proportion as shall be just according to the benefits accruing to such lots or lands and the value of the same. A village is not authorized to levy a so-called street tax of \$ 3.00 against able-bodied male persons residing in the village, but all such persons are liable for the payment of a \$ 3.00 road tax to be collected by the county road board.

2nd. You inquire whether the village of Springer can levy a tax of more than five mills for expenses.

The Act of 1909, above referred to, has expressly provided that {*126} a village shall have power, by ordinance, to levy a tax not exceeding one-half of one per cent in any one year upon the taxable property in such village for the purpose of defraying the expenses of the village government.

3rd. You say that you have an occupation tax ordinance and that it is contended that the same cannot be enforced.

I am unable to make any reply to this question without having the ordinance before me.

4th. You say that you have an ordinance requiring saloons to pay an annual license of \$ 100.00, and desire to know whether such ordinance can be enforced.

In reply I have to say that I am unable to find in the act, under which the village of Springer was incorporated, any authority whatever for the enactment of such an ordinance.

5th. Replying to this inquiry, I can see no reason why a mayor of a village cannot fill the office of justice of the peace.

A municipal corporation, such as the village of Springer, is wholly under the control of the legislature which alone has the power to provide in what manner the taxes shall be levied for its support, and such a corporation cannot levy and collect a license or tax for any purpose unless specifically authorized by its creative body so to do. Such a power must be plainly and unmistakably conferred and be specifically granted in terms.