

Opinion No. 14-1368

October 23, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Ad. H. Richter, Tularosa, New Mexico.

OCCUPATION TAX.

OPINION

{*229} I was kept away from Santa Fe longer than I expected when I wrote you a brief line on October 11, and returned here night before last, and take the first moment I have had to answer your letter of the 9th instant.

In your letter you say that you have just received notice from the county assessor demanding that you make an application for a business license, and that you wish to get information from me as to the legality of that request.

The license tax, to which the request of the assessor refers, is fixed by the second subdivision of Section 4141 of the Compiled Laws of 1897, as amended by the first section of Chapter 108 of the Laws of 1901. As amended it requires that "Dealers in merchandise, other than liquors, whose annual sales do not exceed ten thousand dollars, shall pay a license tax of ten dollars per annum." Section 5 of the same act of 1901 amends Section 4155 of the Compiled Laws, and among other things makes it the duty of the assessor to notify any person, firm or corporation doing business which requires a license and who has not taken out the license, or whose license has expired, that such license must be taken in the manner prescribed by law. Section 4 of the same act of 1901 amends Section 4149 of the Compiled Laws, and requires any person who is doing business without having paid the license tax, to pay double the amount for the time from the beginning of business until a legal application has been made, and makes it a misdemeanor for any person to refuse or neglect to take out a license for thirty days after receiving the notice from the assessor.

If you are a dealer in merchandise it would seem that you are subject to the payment of this license tax. It is not a tax upon property, but a tax upon the occupation, or a license for the privilege of doing business. Such taxes are not uncommon and have been upheld by the courts as a proper exercise of the taxing power, and it cannot be considered as anything in the nature of double taxation which is prohibited by Section 2 of Article VIII of the Constitution of the state.

You refer to the facts that you have to pay \$ 3.00 per year for a druggists' license, \$ 25.00 per month for rent, \$ 40.00 per year for insurance, \$ 40.00 to \$ 50.00 per month for railroad freight, besides other expenses; that your average sales do not exceed \$ 500.00 per month, and that you have lost much money by depredations of thieves, but I

am unable to see how any of those things have any relation to the validity of the imposition of an occupation tax, nor can I see that that indicates that there has been any unfair discrimination against you. It cannot be contended that other merchants, situated as you {*230} are and carrying on the same kind of business, are not subjected to the same burdens, or that anyone in your class is not treated the same.

Upon further reflection I think you will find that the things which appear to you to be grievances are inevitable under the law as it stands. I think your letter indicates that if the law justifies such things you are dissatisfied with the law, as you say, in substance, that if these things are so you will quit the business entirely and take the political stump and open the eyes of the people. It is not only the privilege of every man who is dissatisfied with existing laws and institutions, but also his duty to raise his voice against what he considers to be injustice, as it is only by agitation that attention can be attracted to governmental evils in the hope of bringing about needed changes or reform.

I infer from your letter that you have not in the past been paying this license tax which is now demanded, and this would seem to indicate that your county assessors have been negligent in the discharge of their duties.