

## Opinion No. 14-1372

October 26, 1914

**BY:** FRANK W. CLANCY, Attorney General

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

### **OCCUPATION TAX.**

Occupation or license tax.

### **OPINION**

{\*233} I have just received your letter of yesterday, and I sympathize greatly with you in your feeling with regard to what appears to you to be "nothing but corruption, fraud and oppression" but I am not able to agree with you that the taxation matters, about which you complain and which appear to you to be so unjust, are really of that character. I have no doubt that, as a matter of law, an occupation or license tax imposed upon merchants, is something entirely distinct and apart from the general property tax imposed upon property which the payer of the tax may have whether that property is used in the business upon which he pays the license tax or not.

All merchants of all kinds in New Mexico, under the law, are required to pay a tax upon the average value of their stocks of merchandise during the preceding year, and in addition, must pay the license tax which is graded from \$ 10 per annum for merchants whose sales do not exceed \$ 10,000 up to \$ 150 for those whose annual sales exceed \$ 100,000. Keepers of hotels or inns are required to pay a license tax, but in addition, they are taxed upon any property which {\*234} they own, whether used in their hotel business or not. The owners or managers of buildings used for theaters, public balls and public entertainments, must pay a license tax but the property itself is also taxed.

You ask whether druggists elsewhere in New Mexico, pay an occupation license besides the druggist license and taxes on property. I have not inquired particularly about druggists, but I understand they all come under the general head of merchants, and all merchants are subject to the occupation tax, and I have no doubt that each one pays not only for his license as a pharmacist, but also his occupation tax for the privilege of doing business as a merchant. If any of them do not pay such tax and their property tax besides, it is due to the negligence of county officers.

You say that you wrote to Judge Pope about the constitutionality of these tax proceedings, and that he advised you to employ a lawyer and bring the matter before him. You appear to think that there was something wrong about this, but when you reflect that a judge before whom cases may come for adjudication, ought not to make up his mind beforehand as to any particular matter, you will see that it was perfectly proper for him to decline to express any opinion in advance.

You say that you have also written to the Secretary of State and to the Attorney General of the United States at Washington on this subject, but I anticipate that any answer you receive from either of those gentlemen, will be to the effect that the matters of which you complain, are purely local in their character, and that they cannot, with any propriety, give you advice or express opinions about matters which fall entirely within the jurisdiction of a state.

Your idea that your payment of an occupation tax as a merchant and the payment of a tax upon your stock of merchandise constitutes double taxation, does not appear to me to be well-founded. The one is in the nature of a tax for the privilege or right to carry on a particular kind of business, while the other is not a tax upon the same thing but upon the property which may be used in that business. Any wrong or injustice which you feel that you suffer should be remedied by the legislature and cannot be remedied by any administrative officers like county assessors, district attorneys, judges of the courts, or attorneys general. To the legislature only can you properly appeal for a correction of what you consider to be evils in our legislation.

You say that you were swindled out of a large amount of money, practically all of your resources, by a man who operated some land scheme falsely representing that he had contracts for large amounts of land, and also had other valuable assets. That man might have been punished for obtaining your money by false pretenses if the facts were as you believe them, but I am unable to see any connection between your losses through a swindler and the question of your paying an occupation tax. I regret very much that you should have been the victim of any such swindle and also regret that swindlers of that kind are not uncommon. I would like to see them restrained, and whenever I have had opportunity to do so, I have tried to protect people against such men, but there is no effective {\*235} way by which to prevent confiding human beings from being deceived and robbed by their unscrupulous fellows.