

Opinion No. 16-1749

March 3, 1916

BY: FRANK W. CLANCY, Attorney General

TO: E. P. Bishop, City Clerk, Folsom, N. M.

Occupation tax imposed upon barbers and blacksmiths by city ordinance and upon persons who drive autos for hire.

OPINION

{*322} I have today received your letter of the 1st instant, in which you say that your city council recently passed an ordinance providing for an occupation tax in the city, and among the occupations listed were barber shops, blacksmith shops and autos for hire, and you desire information as to whether or not the city has a right to enforce this ordinance, and if so, what would be the proceeding?

The authority to impose any such taxes is to be found in the 13th, 14th, 15th, 16th, 18th and 61st sub-divisions of Section 3564 of the new Codification of the statutes. I cannot find in any of those paragraphs anything which would authorize an occupation tax upon barbers or blacksmiths. The 52nd sub-division gives authority to direct the location and regulate the use of blacksmith shops within the limits of the city, but no authority is given to impose a license upon them. No mention is made anywhere of barbers.

As to a tax upon autos, you will see by Section 386 of the Codification, that no tax beyond that created in the chapter of which that section is a part, can be imposed except that incorporated places may require owners to register their state numbers in the office of the city clerk for a fee of not exceeding fifty cents per annum. If, however, your ordinance imposes an occupation tax upon the persons who drive autos for hire to the public, that may be justifiable under the 14th sub-division of Section 3564, which gives authority to license, tax and regulate hackmen, omnibus drivers, cab men and all others pursuing like occupations.

As to the method of enforcing any such ordinance, that should be provided in the ordinance itself and it might be either by civil suit to recover the amount of the tax or the ordinance might provide that a disregard of the requirements should constitute a misdemeanor and make the defendant punishable by criminal prosecution.