

## Opinion No. 16-1854

July 29, 1916

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

**TO:** W. H. Braley, Town Clerk, Portales, New Mex.

**Occupation taxes in incorporated cities, towns and villages.**

### OPINION

{\*411} I have just received your letter of the 27th instant asking about occupation license taxes under Sections 3302 and 3303 of the Codification of 1915, which taxes, by Chapter 63 of the Laws of 1915, are to be collected by city treasurers, which the law specifies shall include all incorporated cities, towns and villages.

As a foundation for the construction of these statutes it must be borne in mind that laws imposing taxes are to be strictly construed and the tax imposed cannot be extended so as to cover things not within the terms of the law. Section 3302 imposes upon keepers of hotels, inns and restaurants where food or lodging is provided, a license tax of \$ 20 per annum when the annual receipts exceed \$ 1000 and do not exceed \$ 2000. The keepers of such places whose annual receipts are less than \$ 1000, are not subject to this license tax.

Section 3303 imposes a license tax upon the owners or keepers of a building used as a place of public amusement, a license tax of \$ 10 per annum where the hall or building has a seating capacity of three hundred persons. I believe by the same rule of construction as in the case of the other section, it seems clear that if a hall or building has a seating capacity of less than three hundred, no license tax can be collected. You say, however that you have a picture show the owner of which keeps the seating capacity down to about 290, and claims he is not liable for the tax for the reason the seating capacity is less than three hundred. If you mean by this that he does not furnish seats for as many as three hundred but that there is space in his hall for more chairs which would enable him to seat three hundred, my opinion is that he would be liable to the tax as the seating capacity ought not to be measured merely by the number of seats actually provided but by the number which might be provided within the hall.

I am of opinion that the intention of the legislature must have been to impose a tax upon all halls where the seating capacity does not exceed three hundred persons, but the wording of the act does not seem to have accomplished that intention. As it is worded it seems to accomplish the absurd result of imposing a license if there is seating capacity for not less than three hundred persons and a larger tax if the hall should have a seating capacity of three hundred and one persons.