

Opinion No. 17-1995

June 11, 1917

BY: HARRY L. PATTON, Attorney General

TO: Hon. C. A. Perkins, Village Attorney, Carrizozo, New Mexico.

Authority to Impose Occupation Taxes by the Various Classes of Villages in New Mexico

OPINION

I am in receipt of your letter of the 1st inst., enclosing copy of Ordinance No. 9 of your town, as well as your letter of the 7th inst., and note what you have to say.

Section 3747, Code 1915, reads as follows:

"Boards of trustees of incorporated towns and villages, under the provisions of Chapter XXXII, Session Acts of 1891, in the Territory of New Mexico, shall have and possess all the general and other powers now by law conferred on incorporated towns for the good government, order and welfare thereof."

Article II of Chapter LXXV., same being Sections 3532 to 3562, inclusive, provide for and relate to the incorporation of cities and towns.

Section 3563 reads as follows:

"All municipal corporations organized under Article II. of this chapter shall have the general powers and privileges, and be subjected to the rules and restrictions granted and provided in the sections of this article."

Following this is an enumeration of the various powers conferred upon incorporated cities under our statutes. The sections which I have cited state, in a circuitous manner, that villages organized under the laws of 1891 possess the same powers as those conferred upon incorporated towns, and that incorporated towns have the same powers conferred upon them as upon cities. In short, villages incorporated under the law of 1891 have all the powers which are conferred upon towns and cities. This is not material to the question which you ask further than to contrast the authority granted under the act of 1891 and the act under which your village was incorporated.

You state that the village of Carrizozo was incorporated in the year 1917. Such being the case, it was incorporated under the provisions of Chapter 117, Laws 1909, which appears as Sections 3764 to 3778, inclusive. The powers granted to villages incorporated under the act of 1909 appear at and are confined to the provisions of Sections 3771 to 3777, inclusive. In my opinion, the powers conferred by the sections

named are exclusive of all other powers except those of a general nature which may be exercised by all municipal corporations, except those powers conferred under Chapter 63, Laws 1915, to which reference is hereafter made.

The ordinance inclosed by you imposes an occupation tax upon more than fifty different kinds of business enterprises. In fact, it covers almost all of the vocations which can be conceived of as being pursued in a town of the size of Carrizozo. I fail to find any authority in Sections 3771 to 3777 which authorizes a village to tax the vocations enumerated in your ordinance. In my opinion, the sections referred to do not authorize a village to impose an occupation tax upon any business or vocation.

It is recited in the preamble to the ordinance that your council is proceeding under and by virtue of the provisions of Chapter 63, Laws 1915. Section 1 of said act reads as follows:

"That all occupation taxes heretofore authorized by law to be collected by the State of New Mexico and respective counties thereof, other than liquor licenses, shall be collected by the respective city treasurer of and for the incorporated city wherein such occupant maintains the business for which said occupation tax is collected. And said city shall be entitled to retain the said funds so collected for the general use of said city."

Section 4 of said Act reads as follows:

"The term 'city' whenever used herein shall include all incorporated cities, towns and villages, whether incorporated under general or special laws."

Whatever authority you may have for collecting an occupation tax is granted by the provisions of said Chapter 63, Laws 1915. This act authorizes cities, towns and villages to levy "all occupation taxes heretofore authorized by law to be collected by the State of New Mexico and respective counties thereof, other than liquor licenses." From this, you may see that your authority to impose an occupation tax is limited to the subjects authorized by law to be collected by the state or county. It then becomes necessary to determine what authority the state or county has to levy occupation taxes. Sections 3299 to 3303 enumerate businesses and vocations upon which the county may impose an occupation tax. Sections 3313 to 3317 provide for the collection of a license from persons who operate dance halls. Sections 4047 et seq. relate to the collection of a license from pawn brokers. Sections 3005 et seq. impose a license upon itinerant vendors. Section 4061 relates to the issuance of licenses to itinerant vendors of drugs and medicines. Sections 558 and 559 impose a license upon peddlers of beef. Your attention should be called to the fact that Chapter 83, Laws 1915, exempts any resident of the state from the payment of an occupation tax for selling wood, fruits, farm and garden products, and fresh meats butchered from animals of his own raising. The section cited by me may not cover all the vocations upon which an occupation tax may be imposed, but they are all that I can find at this time.

As I have already stated, your ordinance imposes an occupation tax upon almost every conceivable kind of business. You may readily see that you have, by this ordinance, placed an occupation tax upon a great number of business enterprises, upon which such tax is not authorized to be collected by the state or county. It follows that in such instances you have exceeded the authority conferred upon you by the statute, since your only authority for imposing an occupation tax is limited, as I have already stated, to the provisions of Chapter 63, Laws 1915, and none is conferred by Sections 3771 to 3774. Your ordinance should be amended to include only those vocations authorized to be taxed by the state or county under the occupation tax statutes.

It is further my opinion that a village incorporated under Sections 3764 et seq., Code 1915, has no authority to tax and regulate saloons. In this view, my predecessor, Hon. Frank W. Clancy, concurs, in his opinion No. 1848, appearing at page 408 of "Opinions of the Attorney General," 1915-1916.