

Opinion No. 18-2098

May 10, 1918

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Howard L. Bickley, Attorney at Law, Raton, N.M.

Right of City to Impose License Tax on Garages. "Garage" Defined.

OPINION

We have your favor of the 8th inst., wherein you state that the city council of Raton is revising its occupation tax or license ordinance. You state that it is desired to impose a license-tax upon garages, but that you are in doubt as to whether the city has any such authority. You state that it has been suggested that the license might be upheld on the strength of sub-section 61 of section 3564 where authority is given to cities to license livery stables. You state that you have been proceeding upon the theory that the city will not have a right to impose a license tax upon any occupation without specific statutory authority and I think you are quite correct in this view.

I agree with you that if a license upon garages can be upheld it must be upon the proposition that garages are included within the term "livery stable." You have cited me several definitions of the term "livery stable" from which it appears that the term includes stabling for vehicles as well as for horses. I have been unable to find many judicial definitions of the term "garage" but there are several cases which I think are worthy of consideration in determining the question you ask.

In the case of *Beach v. Jenkins* 159 N. Y. S. 652 it was held that a building restriction in a deed against the construction of a barn or stable applies likewise to a garage. The court held:

"A garage is a structure having many things in common with a stable. The objectionable features about a stable are the odor, the noise and the danger of fire. The objectionable features about a garage are the same. The Century Dictionary defines a garage as 'A stable for motor cars.'"

In the case of *Diocese of Trenton v. Toman* 70 A. 606 held that an automobile is a carriage within the meaning of a reservation in a deed of a carriage way, even though automobiles were not known at the time of making the reservation. The court said that:

"Garages occupy, with relation to automobiles, the same place that stables do with regard to horses."

In the case of *Smith v. O'Brien* 94 N. Y. S. 673 the court said:

"The garage is a modern substitute of the ancient livery stable."

The court in this case likened the garage keeper to the livery stable keeper in applying certain principles of the law of liens, but the court held that a garage keeper did not come within the purview of the stable keepers lien statute because such statute specifically referred to the keeping of animals.

In the second case above cited, the court said that laws referring to vehicles generally apply to automobiles, even the motor vehicles were unknown at the time of the passage of the law.

In the light of the foregoing authorities, it occurs to me that it might be possible to impose a license upon garages, as 'livery stables.' I would not have the temerity to say that in my opinion a garage is a livery stable, but I think that a reasonable and plausible argument can be made to that effect. I think that the uncertainty is such as to justify a city council in imposing a license. Any aggrieved garage keeper could then test the license and its validity by judicial determination.

I fear this opinion is not particularly enlightening but I am unable to come to any other conclusion than that set out above. I do not know whether or not any other city in this state has attempted to impose a license-tax on garages.