Opinion No. 18-2147

December 4, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Mr. J. H. Coons, Albuquerque, N.M.

Occupation Tax of Insurance Agents.

OPINION

Your letter of November 29th addressed to the Honorable Cleofas Romero, Superintendent of Insurance, has been referred to this office for reply. You state that you are in receipt of a letter from the clerk of the City of Albuquerque, asking your company to pay to the city an occupation tax under Article 1, Chapter LXVI of the New Mexico Statutes, 1915 Codification. You also state that under the law relative to insurance companies it is provided that the provision of a tax of 2 per cent on the premium income contemplates that this tax exempts insurance companies from any other tax except upon real estate. You ask if it was not the intention of the law makers, by this provision, to exempt insurance companies and their agents from the payment of such local occupation tax as that which the city of Albuquerque seeks to collect from you in this instance. You also state that the insurance department of the State of Arizona has advised the cities that they have no right to collect such occupation tax.

In this connection you are advised that it is the opinion of this office that a city can lawfully collect from insurance agents an occupation tax. Section 3301 of the 1915 Codification is as follows:

"All insurance agents, or those engaged in the business of agents, in soliciting or issuing life or fire insurance, shall pay the sum of $ 10 per annum."

This provision authorizes counties to collect the tax therein specified. Under chapter 63 of the Laws of 1915, villages, cities and towns are given the right and authority to collect occupation taxes authorized by former laws, among which will be found the law just quoted relative to insurance agents.

The fact that the law requires an insurance company to pay 2 per cent tax on the premium income does not, in my opinion, prevent the collection of an occupation tax from an insurance agent. The reason for this holding is clear and obvious. The occupation tax authorized by the laws we have quoted is not in any sense a tax on the insurance company. In the first place there is a well defined distinction between a license tax and a tax, the distinction being that a tax is a "burden or charge imposed by the legislative power upon persons or property to raise money for public purposes, or to defray the expenses of administering the government." A license is "merely the permission or authority to do some act." The fee charged for a license or permission to

engage in some occupation has been defined to be "a sum of money charged to defray the expenses of issuing a license certificate, and of regulating the business, vehicle, or occupation so licensed." These distinctions are recognized by a number of the authorities, and it seems to be the unanimous opinion of the courts which have passed upon this question that an occupation tax in the strict sense of the word is not a tax as contemplated by the law when certain businesses or occupations are exempted from taxes. Our Supreme Court in a case involving the right to tax motor vehicles, where it was urged that the requirements regarding a license would conflict with the constitution, in that it would constitute double taxation, recognized the distinction we have drawn, and held that the requirements in this regard could not be considered as being double taxation.

We therefore conclude that the laws of 1915 which require persons engaged in the insurance business to pay an occupation tax do not conflict with the other provisions of the law exempting insurance companies from paying any tax except the two per cent on the premium income, and that the city may lawfully require a person or corporation engaged in the insurance business to pay an occupation tax.