

Opinion No. 21-3098

August 23, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Guy A. Reed, City Attorney, Carlsbad, New Mexico.

Laws Authorizing Collection Occupation Taxes.

OPINION

{*85} I have delayed replying to your letter of August 10th regarding the laws governing the powers of municipal corporations to impose and collect occupation taxes, until such time as I should be able to give the matter some thought and consideration.

I agree with you that Chapter 61, Code 1915, governing the licensing of itinerant vendors is in full force and effect.

You refer to Chapter 56 relating to "pawn brokers." Chapter 56 refers to "Indians." I assume your reference was intended to be Chapter 86. This is also in full force and effect.

You refer also to Article 3 of Chapter 75 and Chapter 66, Code 1915, and ask if, in our opinion Chapter 148, Laws 1919, repeals and supersedes the provisions of Chapter 66.

In my opinion, Chapter 148, Laws 1919, does not repeal Chapter 66 of the Code, nor does it supercede it in any manner. On the contrary, in my opinion, it was intended to be supplemental to the provisions of Chapter 75 and Chapter 66 of the Code.

You will note that Chapter 148 refers to an occupation tax upon garages, machine shops, "and all other business occupations or professions for which an occupation tax is not otherwise provided by law."

The language used conclusively indicates that the act was intended to be supplemental to other acts authorizing the levy of occupation taxes.

It would appear, however, from the last paragraph of Section 1 of the act that the tax must be levied in proportion to the amount of business done in the various occupations, and that a flat occupation tax would not be legal upon any of the occupations which would be included among those mentioned in the first paragraph of Section 1.

The only cases in which a flat tax could be levied are those mentioned in Chapter 66 and in Section 3564, Code 1915.

I trust that the foregoing will be of some assistance to you in your efforts to compile the ordinances of the City of Carlsbad.