

## Opinion No. 31-92

March 20, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Honorable Arthur Seligman, Governor of New Mexico, Santa Fe, New Mexico.

{\*52} Regarding the status of Senate Committee Substitute for House Bill No. 355, it is my opinion that same, should it become a law, is inoperative in so far as municipalities designated under our laws and holding charters as cities are concerned.

The title to bill is as follows: "An act relating to the assessments and collection of license tax upon gasoline and oils sold within municipalities." Thereafter Section 1 provides in part, "That the governing bodies of **certain towns and villages**, whether incorporated under general or special act, shall have power, etc.," and this section is the one conferring authority and power to the municipalities therein mentioned designed to be conferred by the act.

Further in the bill the language used is "such municipality," "municipalities" and "municipality," nowhere therein is "city" or "cities" mentioned conferring any power or authority to a "city" or "cities". In Section 2 "city" is mentioned and again in Section 5, but as stated, such mention is not made to confer any power of authority, but is merely incidental to regulatory and administrative features of the measure.

It is well settled that the expression of one thing is the exclusion {\*53} of the other, and where, in setting forth the municipalities effected by expression two, all others, including cities were excluded.

The act may also be unconstitutional in that the substitute bill perhaps changes the intent of the original act in violation of Section 15 of Article 4 of the Constitution, and in that stating that the act to apply to "certain towns and villages" it may also be repugnant to Section 24 of said Article 4.

This, however, is probably immaterial for the reason that the act in my opinion in any event is not applicable to cities