Opinion No. 31-50

February 9, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. E. M. Fisher, City Clerk, Lordsburg, New Mexico.

*{*41}* This is in reply to your letter of February 3, 1931 asking for an opinion as to whether or not the Municipality of Lordsburg can pass an ordinance taxing a laundry and dry-cleaning business situated in Safford, Arizona, which sends its agents to Lordsburg to solicit work there, takes the clothes to Safford, and then delivers them back after laundering and dry-cleaning them. I take it from your letter that you refer to some form of occupation or license tax.

The question involved, apparently, is whether such a tax would be an unconstitutional interference with interstate commerce. Upon this point the authorities are divided. I have been able to find three cases in the United States in which this question is decided.

In the case of Smith v. Jackson, 54 S. W. 981, decided by the Supreme Court of Tennessee in 1899, there was an agent residing in Springfield, Tennessee, who collected soiled linen of his neighbors and expressed it to a laundry in Kentucky to be washed and laundered; when this was done it was sent back to him and he delivered it to the owners, and collected the price of the entire service. The Supreme Court of Tennessee decided that he was not engaged in interstate commerce and must pay the privilege tax imposed by law.

In the case of Commonwealth v. Pearl Laundry, 49 S. W. 26, decided by the Supreme Court of Kentucky in 1899, almost the same state of facts exists as in the case of Smith v. Jackson. The defendants are agents for a laundry in another state. The Supreme Court of Kentucky decided that they were not subject to a license tax. In its opinion the court says:

"* * * the law is well settled that a citizen of another state may come into this state, and solicit and receive work to be done in another state, without being required to pay a license tax. See Crutcher v. Kentucky, 141 U.S. 47, 11 Sup. Ct. 851; Robbins v. Taxing Dist., 120 U.S. 489, 7 Sup. Ct. 592; and Brennan v. City of Titusville, 153 U.S. 289, 14 Sup. Ct. 829."

This Kentucky case, apparently, is directly contra to the Tennessee case.

The most recent case, and one which seems to be directly in line with the facts stated in your letter, is Kansas City v. Seaman, 160 Pac. 1139, 99 Kan. 143, L. R. A. 1917 B., decided in 1916 by the Kansas Supreme Court. In this case the appellant, Seaman, lived in Kansas City, Mo., and worked for a laundry located in that city. He gathered *{*42}* laundry in Kansas City, Kan., took it across the line into Missouri to be laundered,

and returned it after the work was done. He was arrested for violating a Kansas City, Kan. ordinance which prohibited engaging in the laundry business without having obtained a license. Upon this charge he was convicted in the lower court, but the case was reversed in the Supreme Court. In its opinion the Court said:

"Undoubtedly there were features of the business conducted by the laundry company which involved interstate transactions. The sending of its wagons into another state, with agents to collect articles to be laundered, the transporting of the same to its place of business in Missouri, and returning the articles to the owners in Kansas after the work had been completed, involved trade and intercourse."

Thus, it will be seen that the holding in this case is in line with the Kentucky case.

The New Mexico Supreme Court, so far as I have been able to find, has never decided the exact question stated in your letter. I cannot say, of course, what it's decision would be if the question were presented to it. The imposition of a tax such as you suggest might lead to litigation in which our Supreme Court would be called upon to decide this point. In view of the conflicting authorities above cited, any opinion that I might give as to what holding our Supreme Court would make regarding the tax you suggest would be mere speculation.

By: Quincy D. Adams,

Asst. Atty. General