

Opinion No. 34-728

February 9, 1934

BY: FRANK H. PATTON, Asst. Attorney General

TO: Honorable E. R. Wright, Attorney at Law, Santa Fe, New Mexico.

{*115} Your letter of February 8th enclosing letter from Mr. Robert F. Armstrong, Attorney at Law for the Continental Oil Company at Ponca City, Oklahoma, has been received.

Mr. Armstrong refers to our recent letter wherein we held that Chapter 73 of the Session Laws of 1933, repealed only such parts of existing law as related to or applied to occupation taxes to be paid by retail dealers in merchandise; that municipalities still have the right to levy occupation taxes against wholesale dealers in oil and gas where the one-cent municipal gas tax is not imposed; that where the plant is located outside of the municipality that such {*116} occupation tax is to be paid to the County Clerk.

It is the latter point, to-wit, that where the plant is located outside of the municipality that such occupation tax is to be paid to the County Clerk that is questioned by Mr. Armstrong, and upon a study of his letter there seems to be a substantial basis for his contention.

As stated by him, Chapter 73 amended Section 81-101 of the 1929 Compilation which was the old provision regarding occupation taxes by dealers in merchandise, no distinction being made therein between retailers and wholesalers.

Chapter 73 is limited in its application to retail dealers, and by the terms of the act retail dealers in merchandise of all kinds are included "other than liquors, oil, gas and other motor fuels, peddlers, itinerant vendors and dealers in new or used automobile * * *."

Section 81-106 of the 1929 Compilation, in effect, provides that dealers of the class under discussion should obtain a license from the county clerk, but there can be no doubt but that this section was based upon the former section, namely, 81-101, which has been superceded by Chapter 73, and in view of the situation outlined, we are inclined to agree that Mr. Armstrong's viewpoint is correct and that there is no authority for wholesale dealers whose places of business are located outside of municipalities to obtain a license from the County Clerk.

Therefore, our former statement in this regard is to be considered as corrected by this opinion, and we wish to thank you and Mr. Armstrong for bringing the matter to our attention.