

Opinion No. 37-1598

April 14, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. George M. Biel Superintendent of Insurance Santa Fe, New Mexico

{*74} Your letter of April 13th requests a reconsideration of our opinion to you dated March 29 wherein we held that the 2% tax upon the gross premiums of fraternal benefit societies as provided for by Chapter 69 of the Laws of 1937 was not retroactive.

You have submitted in your letter additional facts in regard to the nature of the tax imposed.

Section 71-127 of New Mexico Statutes Annotated, 1929 Compilation, after prescribing certain fees to be paid by insurance companies, provides as follows:

"Every foreign insurance company licensed to transact an insurance business in the State of New Mexico shall also pay annually on or before the first {*75} day of March of each year two per centum of the gross premiums collected by it in New Mexico during the preceding calendar year * * *"

The provision in Chapter 69 of the Laws of 1937, and which has reference to fraternal benefit societies, provides for the payment of certain fees by said societies and this is followed by this language:

"And every such society shall also pay annually on or before the first day of March of each year, **for the privilege of doing business in the State of New Mexico**, two per cent of the gross premiums collected by it in New Mexico during the preceding calendar year * * *"

The words which I have underscored reveal to my mind a radical difference in the nature of the tax imposed upon fraternal benefit societies and ordinary insurance companies, and apparently it was the intention of the legislature to make the tax upon fraternal benefit societies a privilege tax, that is a tax for the privilege of doing and continuing in business in the State of New Mexico.

Your attention in this connection is directed to Section 15 of Chapter 105 which is the chapter governing fraternal benefit societies. We find in this section that the license to do business of such societies is renewable upon the first day of April of each year. All licenses terminate on that date and must be renewed.

Considering this matter, therefore, from this angle, it is my opinion that the tax under consideration is a privilege tax payable in advance, and that it must be paid before the license may be renewed.

It is true that the act states that the payment shall be made annually on or before the first day of March and that this date has at the present time already expired. However, we do not consider this provision to be mandatory. It is merely the date of delinquency and it is my opinion that it may be paid at any time before renewal of the license to transact business.

For these reasons you may disregard my former letter of March 29th and same is hereby overruled and withdrawn.