

Opinion No. 43-4297

May 21, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable J. O. Gallegos, Commissioner of Revenue. Santa Fe, New Mexico.
Attention: Victor Salazar, Director

We have your letter of May 13, 1943, wherein you request an opinion concerning certain matters of sub-section "a" of Section 4 of the tobacco tax law. Section 4, subsection "a" provides that certain designated dealers in cigarettes and tobacco in this State, taxed by this act as a condition of carrying on such business, shall annually secure a written permit and shall pay an annual designated fee. It further provides: "This permit, which will be good for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen."

In view of this section you specifically request an opinion in the following language:

"Will you kindly give me an opinion as to what the meaning of the 'ensuing year' is in relation to the application of this law? Does it mean that the permit shall be good and valid for one year from the date of issuance; does it mean that it shall be valid from July 15 to July 15 or does it mean that it shall be valid for the following calendar year?"

It is necessary to construe this language, in view of the intent of the Legislature providing this provision. In a somewhat similar circumstance in the case of *Central Bridge and Construction Co., v. Saunders Co.*, 184 N. W. 220, 222, 106 Neb. 484, it is stated that expenses of the county for the ensuing year refer to fiscal or calendar year.

It was stated in the case of *Hull v. Winnebago County*, 11 N. W. 486, 487, 54 Wisc. 291:

"'Ensuing year,' as used in Laws 1867, c. 13, Sec. 62, providing that the county board of supervisors may at the annual meeting in November determine the amount of the annual salary that should be received by the county treasurer, who was to be elected in the county during the ensuing year, should be construed to apply to the officer elected the same calendar year, and not to the one to be chosen the next year after the salary is fixed."

See also *In re Chester County Republican Nominations*, 62 Atl. 258, 260, 213 Pa. 64; *Agricultural Publishers' Association v. Homestead County*, 197 N. W. 314, 197 Iowa, 380.

In view of the above, it is my opinion that permits should be required on a yearly basis from the effective date of the above act, and that the ensuing year refers to the current year, which is the year starting from the date of the time the tobacco tax goes into effect.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General