

**Opinion No. 44-4571**

September 1, 1944

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. W. T. Scoggin, Jr., District Attorney, Las Cruces, New Mexico

In your letter dated August 30, 1944, you inquire whether or not a barber operating a shop outside the city limits would have to pay a county occupation tax.

In Opinion No. 1726, written July 28, 1937, this office held that a county occupation tax may only be levied against businesses specified in the law. The law providing for county occupation taxes does not specify a tax upon barber shops. For that reason, no county tax on barber shops outside municipal limits should be collected, provided the barber shop is not a dealer in merchandise within the provisions of Section 62-101 of the N.M. 1941 Compilation.

In Section 51-1616, subsection 4, of the N.M. 1941 Compilation, the barber's law prohibits the use of the room or place for barbering for business purposes except the sale of hair tonics, lotions, creams, toilet articles, cigars, tobacco, confectionery, laundry and such commodities as are used and sold in barber shops.

Although there is no county occupation tax on barber shops, as such, if the shop deals in and sells the merchandise listed under the barber's act as being permissible, the shop would then be dealing in merchandise, and would be subject to tax under the provisions of Section 62-101 levied against merchants.