

Opinion No. 47-5018

May 6, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. Robert W. Reidy, Assistant District Attorney, Court House, Albuquerque, N. M.

{*41} We have received your letter of May 2, 1947 in which you ask the following question:

"If a person, firm or corporation makes application for a current occupational license tax under Ch. 62 of the New Mexico Statutes Annotated, can the County Clerk refuse to issue the current license if the person, firm or corporation does not pay up the delinquent occupational {*42} license for prior year?"

You state that this question arises particularly where the business or avocation changes hands and the owners do not know anything about the previous occupational license.

Section 62-107 of the 1941 Compilation, as amended by Ch. 92, Laws of 1943, provides as follows:

"Any person, firm or corporation who shall engage in or carry on any business or avocation, for which a license is required, without having paid such tax, shall be required to pay double the amount of such tax for the time which has expired from the beginning of such business or avocation until a legal application for a license shall have been made; and if such person, firm or corporation shall refuse or neglect to take out a license, and pay the penalty mentioned in this section, for thirty (30) days after receiving from the clerk, a notice such as is required by section 62-110, New Mexico 1941 Compilation, such person, firm or corporation shall be deemed guilty of a misdemeanor, and, upon conviction, be fined any sum not less than fifty (\$ 50.00) nor more than one hundred dollars (\$ 100), or be imprisoned in the county jail not more than six (6) months." ,

It appears to me that if the person, firm or corporation making application for license is delinquent at the time he makes application for a current license, the penalty provided should be collected at the time the tax on the current application is collected, so that the county clerk would be justified in refusing to issue a license unless both the tax and penalty were paid. This appears to be true because the person, firm or corporation is "required to pay double the amount of such tax for the time which has expired from the beginning of such business or avocation until a legal application for a license shall have been made", and since it is made a crime to "refuse or neglect to take out a license and pay the penalty for 30 days".

However, if the business has changed hands so that a different person or firm is making application, it would not appear that such person or firm would be liable for the penalty,

since the license is issued to the person, firm or corporation, and not made a lien on the business itself. This, however, would not be true as to a corporation in which merely the stock changed hands, because it would, of course, be the same legal entity.

By ROBT. W. WARD,

Asst. Atty. General