

Opinion No. 48-5149

May 7, 1948

BY: C. C. McCULLOH, Attorney General

TO: M. Ralph Brown District Attorney Albuquerque, New Mexico

{*148} In your letter dated May 5, 1948 you refer to Section 62-410 of the 1941 Compilation concerning the licensing of carnivals by a county where the performance is outside a municipality and you inquiry as to the meaning of the word "performance" in view of the fact that this statute provides for a license tax in the sum of \$ 100.00 for each performance.

In the case entitled Veterans' of Foreign Wars, Ledbetter-McReynolds Post vs. Hull et al, 51 N.M. 478, the District Court found as a matter of fact that the County Clerk had collected from the plaintiff taxes in the sum of \$ 500.00 for five consecutive daily performances. The Supreme Court set out this finding of fact in its decision and although the question of the definition of the word "performance" was not decided by the court, certainly the Court did acquiesce in the definition of the word "performance" to mean a daily performance.

In the case of carnivals where there are numerous side shows and exhibitions operating continuously or intermittently throughout the day and night, it is very doubtful whether the Legislature intended that each separate show should be separately taxed, the more reasonable construction would seem to be that given by the County Clerk in the above mentioned case and acquiesced in by the Supreme Court that the word "performance" means a daily performance, or, in other words, that the \$ 100.00 should be considered as the amount of the tax for each day a carnival operates.