

Opinion No. 51-5452

October 15, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Hon. Tibo J. Chavez City Attorney Belen, New Mexico

{*160} This is in reply to your letter of August 3, 1951, requesting an opinion concerning the authority of the Town of Belen to license and regulate certain businesses.

You inquired as to the power of the Town of Belen to enact ordinances to require the payment of license fees or to impose regulation upon (1) a motor carrier licensed by the State Corporation Commission, who picks up and delivers goods for shipment within the limits of the Town of Belen; (2) the Santa Fe Railroad's pickup and delivery service within the Town of Belen; and (3) the operation of the several bus companies operating through Belen picking up and letting out passengers within the town limits.

"A license tax on a business of dealing in certain products is not necessarily precluded because a statute has imposed, for the purpose of inspection, a tonnage tax on such products. Nor is there anything inherently obnoxious in the requirement that a person engaging in a business shall have two licenses, one issued by the State and another by a political sub-division or corporation 33 Am. Jur. 345.

"The legislature may delegate the power to impose a privilege or license tax on the business of carriers to a municipal corporation. Pursuant to such authority a license tax for the privilege of doing business within its limits may be imposed by a city, and, although a railroad is compelled by its charter or statute to operate its road through, and do business in, a certain city, it may still be required to take out a license for so doing and pay a license tax therefor." 53 C.J.S. 489.

Our State Motor Carrier Act, which sets up the provision for licensing and regulation of all intrastate motor carriers, says with respect to the powers of municipalities:

"Nothing in this act contained is intended or shall be construed: (a) to limit or restrict the police jurisdiction or power of municipalities over their streets and other highways and public places except as otherwise provided by law.

"(b) In respect to matters other than rates and service regulations, to repeal any power of any municipality (1) to adopt and enforce reasonable police regulations and ordinances in the interests of the public safety, morals and convenience, or (2) to protect the public against fraud, imposition, or oppression by motor carriers within their respective jurisdiction." § 68-1368, N.M.S.A., 1941 Compilation.

The New Mexico statute imposing a franchise or privilege tax on all corporations engaged in business in this state, Chap, 116, Laws of {*161} 1935, does not by its own

language preclude the imposition of any license or occupation tax by a municipality on the same businesses. The language of the statute, § 54-1202, N.M.S.A., 1941 Compilation, says:

"The tax hereby imposed shall be in addition to all property taxes and other taxes and fees now or hereafter required by law."

New Mexico's Emergency School Tax Act, which imposes a "privilege tax" on nearly every type of business, including the business of transportation of passengers and goods for hire, does not, in my opinion, limit the power of the communities or other political subdivisions of the state to impose license or occupation taxes since there is no language specifically prohibiting the imposition of additional taxes.

The specific grant of authority from the legislature to the legislative or governing bodies of cities, towns and villages to impose occupation taxes or license taxes are set out in the statutes Sections 1 and 2, Chap. 145, Laws of 1937, as amended, which are contained as §§ 14-3807 and 14-3808, N.M.S.A., 1941 Compilation. § 14-3807 concerns itself with license tax and states:

"The legislative or governing bodies of cities, towns and villages shall have the power to impose occupation tax upon * * * * and to impose an occupation tax on all occupations, professions, trades, pursuits, or corporations and other institutions and establishments, utilities and businesses of whatever name or character, like or unlike and not enumerated in or provided for under § 14-3808."

In the list of occupations and businesses set forth in § 14-3807, there is no reference to railroads or to common carriers of passengers or goods. § 14-3808 states:

"The legislative or governing bodies of cities, towns and villages shall have the power to license and regulate * * * * and other institutions and establishments, articles, utilities not heretofore enumerated in this section of whatever kind or character, provided that as to such occupations, professions, trades, pursuits, corporations and other institutions and establishments, articles, utilities and commodities not specifically enumerated in this section, the governing body of this city, town, or village, shall by ordinance declare that the licensing or regulation thereof is conducive to promotion of the health and general welfare of such city, town or village; and shall have the power to fix the license to be paid thereon or therefor, and may impose a separate license on each place of business conducted or maintained by the same person, firm, association or corporation. Provided, however, that no occupation, profession, trade, pursuit, corporation or other institution or establishment, article, utility, or commodity, shall be required to pay any license hereunder if named or specified or if currently paying or assessed an occupation tax under § 14-3807 hereof."

In the listing of enterprises in the foregoing section, there is included the following:

"Omnibuses, drays, trucks, jobwagons and other vehicles used for hire."

In my opinion, this enumeration would not be sufficient to include the delivery and pickup operations of a common carrier or of the railroad company although it would, in my opinion, include the operation of motor buses for carrying of passengers. In my opinion, the proper method to follow in licensing the pickup and delivery service of the motor carriers or of the railroads would be the passage of an ordinance as set forth in this act.

I believe that we can conclude from the foregoing examination of the State law that insofar as our statutes are concerned, the Town {*162} of Belen has adequate authority and power to license the operations within the Town of Belen of the pickup and delivery service of the railroad and of the motor carriers as well as licensing the operation of passenger - carrying buses through the Town of Belen. There is, however, the further aspect to consider of whether or not such regulation or licensing would be considered an unreasonable interference with interstate commerce. Insofar as motor carriers operating under certificate from the State Corporation Commission and engaged in purely intrastate business, there is no question but what the Town of Belen has authority to impose reasonable license taxes and necessary regulations for the protection of the health and welfare and safety.

"The State cannot burden interstate commerce by taxing it, and a like rule is applicable with respect of licensing rerequirements and exemptions. Apart from a requirement of a license under the police power, and the qualification of the commerce clause by the 21st Amend., the general rule is that a state cannot make the payment of a license tax or the securing of a license a condition to paying on interstate commerce and cannot tax the privilege of carrying on interstate business." 33 Am. Jur. 345.

This prohibition against interference through taxation of interstate commerce is equally applicable to municipal sub-divisions of the state.

"It is well settled, however, that a license law cannot be deemed a regulation of commerce among the states within the purview of the general rule merely because it may incidentally or indirectly affect such commerce. In the valid exercise of its police power, a state may require a license for a particular business or calling, in which case the requirement is not subject to successful attack under the Federal Constitution as an interference with interstate commerce. Such regulations, however, must be confined to matters which are appropriately of local concern. They must proceed on the recognition of the rights secured by the Federal Constitution. Local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege, and prohibit its exercise in the absence of a local license." 33 Am. Jur. 346.

In my opinion, the Town of Belen by properly enacted ordinance may license the operation of the local service of a motor carrier, bus companies, or the Santa Fe Railroad's trucking operations within the Town of Belen. The licensing must be for the purpose of local regulation, such regulation being determined to be necessary for the promotion of health, and general welfare of the Town. The tax or fee imposed must be

for the purpose of carrying out the regulations imposed by ordinance and not for the purpose of raising revenue.

I trust that this will answer your inquiry fully.