

Opinion No. 52-5481

January 24, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Abner Schreiber Assistant District Attorney Los Alamos County Los Alamos, New Mexico

{*196} This is in reply to your inquiry of January 17, 1952, in which you again bring to the attention of this office the inquiry which you made in 1950 concerning the authority of the Board of County Commissioners of Los Alamos County to impose under provisions of § 61-402 a license tax upon the holder of a State license to sell alcoholic liquors. The question in this instance is directed as to the authority to impose such a tax upon the Zia Company as the holder of a Club license for the Company's lodge at Los Alamos.

§ 61-403, N.M.S.A., gives the Boards of County Commissioners of all counties the authority by resolution duly adopted to impose a license tax upon the privilege of persons holding State liquor licenses to operate within the counties, but outside of municipalities, as retailers, dispensers or clubs licensed to sell intoxicating liquors. In the case of the ordinary liquor licensee in Los Alamos, there would be no question but what the county commissioners would have authority to impose such a tax. However, in the case of the Zia Company, there must be taken into consideration the particular nature of their operation.

The Attorney General's office, in 1939, in Opinion No. 3172, ruled, and that ruling is hereby confirmed, that the license tax imposed by counties and municipalities is a tax and is not a license fee as such.

If the Zia Company operates the lodge at Los Alamos not as an individual owner or operator but under contract for the United States, the United States in this case being the Atomic Energy Commission, as a part of its function as a cost-plus-fixed-fee contractor of the United States, the imposition of a tax upon the Zia Company as operator of the lodge would impose a tax upon the Atomic Energy Commission and not upon the Zia Company.

Section 9(b) of the Atomic Energy Act, 1946, states:

"* * * * The Commission, and the property, activities, and income of the Commission, are hereby {*197} expressly exempted from taxation in any manner or form by any state, county, municipality, or any sub-division thereof."

In the case of Sam K. Carson, Commissioner of Finance and Taxes for the State of Tennessee v. Roane Anderson Company and the same plaintiff v. Carbide and Carbon Chemicals Corp., decided by the Supreme Court of the United States on January 7,

1952, the Court ruled that the Tennessee Use and Sales Tax Law, while applicable to the purchases made by and sales made to the private contractors as far as Tennessee law was concerned was not applicable in the instant case because of the necessary broad interpretation to be placed on the word "activities" as contained in the quoted portion of the Atomic Energy Act. Roane Anderson Company occupies with respect to the AEC Oak Ridge operation the same position as does the Zia Company to the Los Alamos operation and the Carbide and Carbon Chemical Corp. is in a comparable position with the University of California. The Court ruled that the "activities" of the Atomic Energy Commission included the work done for the Commission by these companies as private contractors and thus bringing the private contractors within the scope of the exemption from local taxes afforded the Commission itself by Section 9(b) of the Atomic Energy Act of 1946.

The Zia Company, under Section III-C, No. 2, of its contract with the United States, is required to "procure all necessary permits and licenses, obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, of the State, territory or political sub-division thereof wherein the work is done, or any other duly constituted public authority."

If in the instant case the county license tax were a proper license fee and amounted to the issuance of a license to operate, there would be no question but that the Zia Company would be liable therefor and able under the terms of its contract to expend funds of the Atomic Energy Commission to pay for it. However, as I have stated, the county license tax is purely a tax and not a fee for a license to operate.

The county tax can be validly imposed only if the operation of a bar for the sale of intoxicating liquors can be determined not to be an activity of the Atomic Energy Commission and thus not carried on for the Atomic Energy Commission by the Zia Company as a proper obligation under its contract

I trust that this will answer your inquiry fully.