

**Opinion No. 53-5681**

February 18, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. C. Verne Hale, Jr. Town Attorney Grants, New Mexico

{\*76} In your letter dated February 13, 1953, you state that the Town of Grants has elected to impose a municipal gasoline tax of 1c a gallon upon gasoline sold in the town. You are wondering whether at the same time the town may also collect an occupational tax based upon the sale of gasoline, against the service stations within the municipal limits. Section 7, Chapter 159, Laws of 1931, being Section 14-3907 N.M.S.A., 1941 Compilation provides as follows:

"Where any municipality elects to assess the license tax herein provided for, the same shall be in lieu of any other license or occupation tax which said municipality may be authorized to assess and collect against such dealers in gasoline and oils."

In discussing this section in *Continental Oil Company vs. City of Santa Fe*, 36 N.M. 343, the Supreme Court referred to an occupation tax and the gasoline tax and reiterated the plain language of the statute by these words:

"Plainly, the city could not exact and retain both the old and the new taxes."

Since the city has elected to collect the 1c a gallon gasoline tax it is our opinion that an occupation tax against the service stations involved may not be collected based upon the sale of gasoline.

By: C. C. McCulloh

Assist. Attorney General