

**Opinion No. 54-5992**

July 16, 1954

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

**TO:** New Mexico State Corporation Commission Franchise Tax Department Santa Fe, New Mexico. Attention: Miss Rebecca D. Baca, Chief Clerk

{\*448} You have requested our opinion as to whether or not United States Gypsum Company is subject to the New Mexico State Franchise Tax.

In the enclosures forwarded with your request it was stated that all of the property of the United States Gypsum Company located in the State of New Mexico is used exclusively in interstate commerce and that there are no gross receipts in New Mexico.

If your investigation of said Company and its operations reveal this to be the correct factual situation, it is our opinion, after analyzing Sections 54-1202 and 54-1206, N.M.S.A., 1941 Compilation, that the United States Gypsum Company is not subject to the New Mexico Franchise Tax.

Our reasons for this opinion are found in the case of **Southern Pacific Company vs. State Corporation Commission**, 41 N.M. 556, 72 P. 2d 15. In that case Mr. Justice Brice stated:

"The words 'property and business in this state,' as used in section 2 of the act, are construed by the State Corporation Commission to mean all property of appellee in New Mexico not used exclusively in interstate business, plus the total gross receipts from intrastate business therein; the sum of which represents the authorized and issued capital stock allocated to such corporation's property and business in New Mexico as a basis for the tax. This seems to be the legislative intent."

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"'Business in this state' means just that. It does not mean business across state lines, but that transacted wholly within the state. It cannot be assumed, except for compelling reasons that we do not find to exist, that the Legislature intended a meaning that would render the act unconstitutional."

By reason of the foregoing, it is our opinion that if the above corporation is using its properties in New Mexico exclusively for sales in interstate commerce, this State cannot compel said corporation to pay a Franchise Tax for the purpose of engaging in interstate commerce.

By: Jack A. Smith

Assist. Attorney General