

**Opinion No. 55-6186**

June 10, 1955

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

**TO:** Mr. Jack E. Holmes, Director, New Mexico Legislative Council, Santa Fe, New Mexico

You have requested the opinion of this office on three questions relative to Chapter 263, Laws of 1955. You ask the following:

1. "Under the new law, can a municipality collect a municipal cigarette tax, even though the state is collecting the increased excise tax in the city?"

Since Section 14-44-4, N.M.S.A., 1953, gives any municipality the specific power to place a tax on the sale of cigarettes within the limits of the municipality, and this section was specifically repealed, it follows that the municipality no longer has the power, except in instances where the cigarette tax revenues were pledged for the payment of outstanding bonds, to collect this tax.

2. "What is the effect of a repeal of a section amended by an earlier act of the same legislature?"

The established rule is that where there are two inconsistent, irreconcilable and repugnant statutes, relating to the same subject matter, the latter repeals the former. **Turkenkoph vs. Te Beest**, 55 N.M. 279. Since the repeal was last in point of time, Section 14-44-4, N.M.S.A., 1953, was repealed by the 1955 Legislature.

3. "Must, or should the municipality repeal the ordinance which imposes a municipal cigarette tax at such time as they have no outstanding bonds which pledge the proceeds of the tax, or does Ch. 263, automatically void the ordinance at such time?"

If the municipality attempted to enforce a tax on cigarettes sold within its limits its actions would be void because of Chapter 263, whether the ordinance was on the books or not. A municipality, in order to keep its ordinances up to date, would however, probably want to repeal the ordinance which was repugnant to or in conflict with the state law.

Hoping this satisfactorily answers your inquiry, I remain

By: Jack A. Smith

Assistant Attorney General