

## Opinion No. 55-6212

June 30, 1955

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

**TO:** Hon. Floyd F. Darrow, Member, House of Representatives, State of New Mexico, Albuquerque, New Mexico

This office is in receipt of your letter of this date in which you request an opinion on Chapter 26, Session Laws of 1955. The section about which you are inquiring reads as follows:

"All restaurants operating within the State of New Mexico must obtain by July 1, 1955, and annually thereafter, a permit from the Health Officer, issued through the Bureau of Revenue upon payment to said Bureau of a permit fee based upon gross receipts for the preceding calendar year, as follows: . . ."

You ask whether or not a drug store or a variety store which has a food and drink counter has to pay a license fee upon the gross of its entire business or merely upon the receipts of the food and drink department.

It is the opinion of this office that said license fee should be based upon the gross receipts only of the department selling the food and drink. In establishments that are departmentalized and whose books are kept separately so that this amount can be easily determined, the fee should be based accordingly. However, where some concerns do not keep separate books and are not departmentalized and it is not possible to determine the actual gross receipts of the food and drink section, then I see no other basis upon which to apply the Act except upon the gross receipts of the entire business.

It would not seem logical to base a license tax, which is for the purpose of regulating food and drink, upon the gross receipts of a business in which only a small portion of said gross receipts come from said sales.

It is my understanding that Mr. Louis Lujan, Attorney for the Bureau of Revenue, has so instructed his department in this matter.