

Opinion No. 57-73

April 15, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Mr. W. R. Kegel, District Attorney, First Judicial District, Santa Fe, New Mexico

QUESTIONS

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1. Does the County of Santa Fe have the authority to impose an occupational license against an individual operating a ski lodge on National Forest land?
2. Is the personal property of the above individual subject to the tax?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

ANALYSIS

In answer to question No. 1, above, two questions are presented. Firstly whether an occupational tax can be levied by a county against an individual operating a ski lodge in Santa Fe County, and secondly, if such individual may be taxed whether the fact that the ski lodge is operated on National Forest land gives the individual a personal immunity from the tax.

In Attorney General's Opinion No. 4571, written September 1, 1944, this office held that an occupational tax may be levied only against businesses specified in the law. The law providing for county occupational taxes does not specify a tax upon ski lodges. Section, 61-1-1, N.M.S.A., 1953 Compilation, however, provides that an occupation tax shall be imposed upon dealers in merchandise, and if the ski lodge deals in and sells merchandise, it would be subject to the tax under the above section. Section 60-1-3 also charges the tax against keepers of hotels, inns or restaurants where food and lodging is provided. If the ski lodge provides any of the above services, a tax could be assessed under that statute.

A careful study of cases indicates that although an individual may be operating a privately owned business on Government land, the fact that his business is so located

does not give him an immunity from State taxation. In *State v. Mimms*, 43 N.M. 318, 92 P. 2d 993, the New Mexico Supreme Court stated that:

"The statute exempting land acquired by United States for reclamation purposes from state taxation does not exonerate one granted concession by federal reclamation bureau to sell liquor on such land from state license taxation."

The stipulated facts in this case showed that Mimms first engaged in business at the Elephant Butte Dam under a four year exclusive contract with the Federal Bureau of Reclamation. Mimms had beer and wine exposed for sale in a building occupied by him upon the land owned by the United States Government. He did not have the requisite licenses required by the State's authorities for the sale of liquor under the Laws of New Mexico. He contended that the State of New Mexico had given title to the land to the United States Government, giving the United States exclusive jurisdiction, and further, that the State of New Mexico relinquished all rights in regard to taxation. Our Court stated that the State of New Mexico, when it conveyed the property to the United States, ceded jurisdiction to the United States and exonerated the United States from all state, county and municipal taxation, but that when the Federal Government gave to Mimms a concession to do business upon the Government's property, that business belongs to Mimms and not to the Government. They said the exemption from taxation goes only to the Government and not to its concessionaires. See also *State ex rel. State Board of Equalization et al. v. Glacier Park Company*, 164 P. 2d 366; *Nikis v. Commonwealth*, 131 S.E. 236; and *Wilson et al., d/b/a Wilson Lumber Company v. Cook, Commissioner of Revenues*, 327 U.S. 474.

In answer to question No. 2, it is our opinion that a personal property tax could be levied against the operator of the ski lodge. There is, of course, no authority on the part of New Mexico to levy an ad valorem tax since the property belongs to the Federal Government, but again, the personal property tax will be levied against the concessionaire's personal property and improvements rather than the property owned by the Government.

In 16 U.S.C.A., § 480, the state civil and criminal jurisdiction in National Forest is stated as follows:

"The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

As indicated above, the intent and meaning of the above provision was that the State, wherein any such National Forest is situated, should not lose jurisdiction nor should the inhabitants thereof lose their rights and privileges as citizens or be absolved from their

duties as citizens of the State. One of their duties as a citizen of the State would be the payment of personal property tax on their personal property in the National Forest.

In conclusion, it is our opinion that if the operator of the ski lodge is a dealer in merchandise, he would be liable for a tax for the privilege of doing business. If he is providing food or lodging, under § 60-1-3, he would be obligated to pay for an occupational license. Finally, the tax exemption in regard to personal property runs only to the United States rather than an individual, and the State may, therefore, impose a personal property tax upon his personal property lying within the National Forest land.