

Opinion No. 59-108

August 17, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Kaiser Michael, Jr. Assistant District Attorney First Judicial District Santa Fe, New Mexico

{*170} This is in response to your recent request for an opinion on the following questions:

1. Does the Rodeo de Santa Fe Corporation, assuming it to be a non-profit corporation, have to pay a license tax?
2. If so, under which section of the Statute, (60-1-4 or 60-4-10, N.M.S.A., 1953 Comp.) should the tax be levied?

It is my opinion that the Rodeo de Santa Fe Corporation does have to be licensed and that the license tax should be levied under Section 60-1-4, N.M.S.A., 1953 Comp.

It is well settled that the state under its police powers has the right to regulate any business, occupation, trade, or calling in order to protect the public health, morals, and welfare.

Since it is the activity which the state seeks to regulate it matters not whether the corporation is non-profit or profit. It would be unreasonable to take the position that a non-profit organization could engage in an occupation which could develop into a public nuisance without state regulation merely on the basis of its being non-profit. If the matter is one requiring regulation, a non-profit corporation is just as likely to damage the public welfare, health and morals as a corporation organized for profit.

Section 60-4-10, N.M.S.A., 1953 Compilation does not apply to the Rodeo de Santa Fe Corporation because the corporation is not a traveling show nor does it come within the meaning of an itinerant amusement enterprise. The title of this Act (Chapter 79, Laws of 1931) is as follows:

"An act requiring the payment of license tax by every **traveling or road show**, carnival, athletic contest, exhibition or amusement held or conducted outside the limits of any incorporated city, town or village and providing penalties for the violation of the act."
(Emphasis Supplied)

The fact that certain specified types of public amusements or entertainments are exempted from the operation of the act does not have the effect of limiting the exceptions to those specified, and further, the exceptions contained in Section 60-4-8 do not apply to shows held outside municipalities. Those exceptions are limited to the

sections of the Act from Section 60-4-1 to Section 60-4-9 only. The Rodeo de Santa Fe should be licensed under Section 60-1-4, N.M.S.A., 1953 Compilation and not under Section 60-4-10, N.M.S.A., 1953 Compilation.

By: B. J. Baggett

Assistant Attorney General