

Opinion No. 59-74

July 20, 1959

BY: Hilton A. Dickson, Jr., Attorney General

TO: Mr. Charles A. Feezer Assistant District Attorney Fifth Judicial District Carlsbad, New Mexico

Only dealers in merchandise and those other occupations enumerated in Section 60-1-1, et seq., N.M.S.A., 1953 Compilation are subject to County Occupation License requirements.

A contractor is not subject to the County Occupation License requirements of Sec. 60-1-1, N.M.S.A., 1953 Compilation.

OPINION

{*117} This is written in reply to your recent request for an opinion on:

1. "Whether the terms of the statute relating to occupation taxes for counties (§ 60-1-1) are limited only to dealers in merchandise, subject to exceptions set forth, or whether any and every kind of occupation is taxable by the county under this section?"
2. "Whether a contractor is subject to the County Occupation license requirements?"

{*118} It is my opinion that only dealers in merchandise and those other occupations specifically enumerated in the statute are subject to the County occupation license requirement.

It is my opinion that a contractor is not subject to the provisions of the County Occupation license requirements.

The statute in question, § 60-1-1, N.M.S.A., 1953 Compilation is clear and unambiguous. It says that only dealers in merchandise and those other occupations enumerated in the following sections must have an occupation license.

The first question has been considered by this office before. The following opinions will provide the basis upon which it is decided that only dealers in merchandise and those occupations specifically enumerated in the sections following § 60-1-1, N.M.S.A., 1953 Compilation are subject to the licensing section. Opinion of the Attorney General No. 59-32, dated April 6, 1959; Opinion of the Attorney General No. 5674, dated February 17, 1953; Opinion of the Attorney General No. 4571, dated September 1, 1944.

In regard to your second question, a dealer is defined as one who deals, trades, distributes, delivers or does business or is a middleman. **Charles E. Russell Co., vs.**

Carroll, 194 Va. 699, 74 S. E. 2d 685. Merchandise is defined as all things merchants ordinarily sell at wholesale or retail. See **Words and Phrases**, "Merchandise", Vol. 2.

Quoting from Opinion of Attorney General No. 59-32, a contractor would seem to be excluded from the licensing section in question:

"It is my view that a distinction must be made between one who deals in merchandise and one who supplies services. . . . By the very nature of this type of business a service is rendered as opposed to a sale of a commodity or goods."

It is clear, then, that a contractor is one who furnishes only services and therefore is excluded from the operation of § 60-1-1, et seq., N.M.S.A., 1953 Compilation.

Copies of the above cited Opinions of the Attorney General are enclosed for your convenience.