

Opinion No. 60-69

April 12, 1960

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

TO: Mr. Guy Mayes Contractors' License Board P. O. Box 1179 Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Is Ordinance No. 295 of the City of Alamogordo in conflict with the Contractors' License Board law in any way?
2. Is Ordinance No. 295 in conflict with the statutes pertaining to licensing of electricians and plumbers?

CONCLUSIONS

1. The Ordinance in question is invalid to the extent that the City attempts to license trades, professions, occupations or pursuits in a manner inconsistent with the statutes governing licensing powers.
2. The Ordinance is invalid in that it attempts to license trades, professions, pursuits or occupations in a manner inconsistent with the statute and further the requirements concerning the bond are beyond the power and authority of the City to enact.

OPINION

{*427} ANALYSIS

It is well settled that a municipality has no power other than those powers granted by the sovereign. A municipality is not a sovereign in any sense of the word and can exercise only those powers expressly granted to it by the State.

This Ordinance would ordinarily be examined with an eye to determining whether or not it invades the field which the State has preempted by legislation. Many cases hold that when the State has preempted a particular legislative area so that there is no room for local legislation, a local ordinance attempting to impose an additional regulation in that field will be void as conflicting with the State law. However, because of the fact that the particular power involved is expressly covered in Sections 14-42-7, N.M.S.A., 1953 Compilation (P.S.), and 14-42-8, N.M.S.A., 1953 Compilation, it is unnecessary to base our decision upon the above construction. Section 14-42-7, *supra*, confers upon the municipality the right to levy an occupation tax on certain enumerated enterprises, including an occupation tax on all occupations, professions, trades and pursuits. The

section following confers upon the municipality the power and authority to license and regulate certain enumerated enterprises among which are occupations, professions, trades and pursuits. This Section, 14-4-28, supra, has an exception in it and this exception reads as follows:

"Provided, however, that no occupation, profession, trade, pursuit, corporation or other institution or establishment, article, utility, or commodity, shall be required to pay any license hereunder if named or specified or if currently paying or assessed an occupation tax under section 14-3807 (14-42-7) hereof."

The Ordinance in question, Section 6, clearly makes the license fee imposed therein an additional levy upon the trades and professions involved. This is in direct conflict with the statutes referred to above and no authority for such additional levy is granted the municipality.

We are fully cognizant of Section 67-16-15, N.M.S.A., 1953 Compilation, which authorizes municipalities to charge a license fee to contractors in addition to the fee prescribed in the Contractors' License Act. But this section does not conflict with Sections 14-42-7 and 14-42-8, supra, and may be construed in harmony therewith. It does not grant additional power of authority to the cities not contained in Sections 14-42-7 and 14-42-8.

Insofar as the Ordinance requires a bond from master plumbers and gas fitters, the Ordinance is invalid. Attorney General's Opinion No. 6351, 1955-56, holds that a municipality cannot require bonds from this class of tradesmen when the State has, through legislation, established the bond to be posted in favor of the people of the State of New Mexico.

Opinion of the Attorney General No. 59-9 advised the Contractors' License Board that an occupation tax could be levied upon a contractor in addition to the license fee exacted by the State. This opinion, is correct insofar as it is limited to a contractor coming within the purview of the Contractors' License Act and insofar as it limits the tax to be levied by the city to an occupational tax. The ordinance in question attempts to levy a license fee by the city in addition to an occupation tax already levied. This, the city cannot do.

{*428} In passing, we feel it incumbent to point out that the ordinance in question is invalid for the further reason that it fails to make the necessary declaration as required by Section 14-42-8, supra. This section, assuming the City elects to charge a license fee instead of an occupation tax, requires that the municipality declare in the Ordinance that the licensing or regulation of the enterprise concerned is conducive to the promotion of the health and general welfare of such city.

We feel that the licensing law would be strictly interpreted in that an Ordinance attempting to license an enterprise must make the declaration required by statute or it is invalid.

For the reasons above stated, it is the opinion of this office that Ordinance No. 295 adopted by the City of Alamogordo is invalid in its entirety.

By: B. J. Baggett

Assistant Attorney General