

Opinion No. 65-152

August 12, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Tom Overstreet, Assistant Attorney General

TO: Louise M. Wright, Colfax County Clerk, Box 160 Raton, New Mexico

QUESTION

FACTS

The Vermejo Ranch, located in Colfax County, New Mexico, is basically a hunting and fishing resort. Its brochure states that it is "truly a sportsman's paradise with attractive and comfortable living accommodations." It has lodging, dining room and cocktail facilities. It also sells hunting and fishing permits. Included in the hunting permit, which is priced from \$ 100.00 to \$ 350.00, are saddle horses, horse feed and wranglers. If the hunting party is between 8 to 12 hunters, the permit also includes the use of one of the hunting lodges equipped with cots, mattresses, cook stove and firewood. To date no occupational license has been issued to the Vermejo Ranch. It does have a school tax license. In regard to the operations of the Vermejo Ranch, the following questions were asked.

QUESTIONS

1. Under what kind of occupational license or licenses are these activities to be classed?
2. If the Vermejo Ranch should have a license or licenses, how far in the past can it be billed?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*258} ANALYSIS

Section 60-1-1, N.M.S.A., 1953 Compilation, provides:

A license tax or occupation tax . . . shall be imposed each year upon the business or avocations mentioned in this chapter, carried on by any person within the State of New Mexico.

Section 60-1-3, N.M.S.A., 1953 Compilation, specifically provides the license tax be imposed on keepers of hotels inns or restaurants, where food or lodging is provided. The Vermejo Ranch would be required to obtain a license under this section for the part of its operations resulting from the furnishing of food and lodging. This would include all the principal guests houses, lodges, and dining rooms which are available on a per day basis. It might also include the lodging furnished to hunters in groups of 8 to 12 that is included in the price of a hunting permit. This determination apparently does not have to be made in the Vermejo Ranch case since annual sales from other lodging and food facilities in all probability exceed \$ 5,000.00. This would place it in the highest category for licensing anyway as provided for in Section 60-1-3, supra.

Section 60-1-1, supra, specifically provides that dealers in merchandise other than liquors shall pay the license tax. Under this Section, Vermejo Ranch would also have to obtain a license for the sale of any merchandise in connection with its operations. This would include the sale of all merchandise such as fishing tackle, hunting gear, camping supplies, and any articles like souvenirs and gifts.

The question of how far in the past should Vermejo Ranch be billed is answered by Attorney General's Opinion No. 4171-42-265. In that opinion we said:

{*259} The duty to pay occupational taxes duly assessed and levied for prior years will continue until paid or discharged, as provided by law. I have examined Chapter 145, Laws of 1937, being the statute which empowers municipalities to impose occupational taxes, and find no limitation upon the right of the municipality to collect such taxes.

It was pointed out in that opinion that the license tax could not be collected prior to 1937 since the statute in effect prior to 1937 had been declared invalid. It was also mentioned that a limitation on the assessment and levy of the license tax could be provided for by the municipality.

An examination of the statutes at this date reveals no limitation on the period for which the license tax can be levied. Unless the County of Colfax has imposed a special limitation, there is none and the license or occupation tax can be levied to the year 1937.

In conclusion, the Vermejo Ranch should have two occupation licenses. One under Section 60-1-3, supra, to cover its operations furnishing food and lodging, and one under Section 60-1-1, supra, to cover any sales of merchandise. Both of these licenses can be levied to the year 1937. This is assuming, of course, that the Vermejo Ranch has been in operation since 1937.