

Opinion No. 66-49

April 25, 1966

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

TO: Inice Hust, County Clerk, Lincoln County, Carrizozo, New Mexico

QUESTION

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Where fishermen are charged a fee by the owner of a private fishing pond, is the owner of the pond required to obtain an occupational license from the County Clerk, as per Section 60-1-1, N.M.S.A., 1953 Compilation?

CONCLUSION

No.

OPINION

{*59} ANALYSIS

Section 60-1-1, N.M.S.A., 1953 Compilation, levies the occupation tax against dealers in merchandise other than liquors. The question of who is a dealer in merchandise has been passed on by this office a number of times. See Attorney General Opinions Nos. 57-73, 59-32, 59-74, and 59-108. These opinions are consistent in holding that a dealer in merchandise is one who is in the business of selling commodities or goods. The owner of a fishing pond who charges a fee for the use of his pond, in our opinion, cannot be classified as a dealer in merchandise. He is merely charging a fee for his consent to the use of his pond. He is not selling a commodity or good. A different result might be reached where the fishermen pay for the fish caught. This situation does not appear from the question asked.

However, if the owner of the pond, in addition to charging a fee for the use of his pond, is engaged in the selling of fish, fishing tackle, bait, or similar items, he would then be properly classified as a dealer in merchandise and subject to the occupation tax under Section 60-1-1, **supra**.