

Opinion No. 67-03

January 9, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Clay Buchanan, Director New Mexico Legislative Council State Capitol Building
Santa Fe, New Mexico

QUESTION

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1. Is the imposition of a municipal sales tax and a city occupation tax, both of which are based on volume of business, double taxation as prohibited by Article VIII, Section 1, of the New Mexico Constitution?
2. Is the imposition of a municipal sales tax and a city occupation tax unconstitutional in that it taxes citizens of one part of the state differently than citizens of another part of the state in violation of Article VIII, Section 1, of the New Mexico Constitution?

CONCLUSION

1. No.
2. No.

OPINION

{*4} ANALYSIS

A municipal occupation tax authorized by Section 14-37-3, N.M.S.A., 1953 Compilation (1965 P.S.) is measured by gross receipts (Section 14-37-3B, N.M.S.A., 1953 Compilation (1965 P.S.)) and is imposed for the privilege of doing business (Opinion of the Attorney General No. 58-12, dated January 20, 1958; **Eugene Theatre Co. v. City of Eugene**, 194 Ore. 603, 243 P.2d 1060 (1952); **Reif v. Barrett**, 355 Ill. 104, 188 N.E. 889 (1933)). A municipal sales tax authorized by Section 14-39-1, N.M.S.A., 1953 Compilation (1965 P.S.) is also measured by gross receipts (Section 14-39-1(A), N.M.S.A., 1953 Compilation (1965 P.S.)) and is also imposed for the privilege of doing business (Opinion of the Attorney General No. 62-23, dated January 30, 1962). Both taxes are levied and collected as revenue measures.

In **State v. Tittmann**, 42 N.M. 76, 81, 75 P.2d 701 (1938), the New Mexico Supreme Court said:

"Double taxation means taxing twice, for the same purpose, in the same year, some of the property in the territory in which the tax is laid, without taxing all of it. If all the property in the territory on which the tax is imposed is taxed twice and for the same purpose and in the same year without discrimination or exemption, this is not double taxation in the sense that such taxation is objectionable, because, within constitutional limits, if the tax is uniform, the amount of it is in the discretion of the taxing authorities, and it may all be levied at one time, or it may be the subject of several levies. 26 R.C.L., title, Taxation, § 231.

Section 1 of article 8 of the New Mexico Constitution is, 'Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class.' There is no provision of the New Mexico Constitution which prohibits double taxation if the taxes are equal and uniform upon subjects of the same class; nor does the Federal Constitution afford protection against double taxation by the authorities of a state. *Baker v. Druesedow*, 263 U.S. 137, 44 S. Ct. 40, 68 L. Ed. 212; *Kidd v. Alabama*, 188 U.S. 730 23 S. Ct.

{*5} The imposition of both a municipal sales tax and an occupation tax upon the same class of businesses for the privilege of doing business is, therefore, not prohibited by Article VIII, Section 1, of the Constitution of New Mexico.

Although municipalities have the authority to enact both a municipal sales tax and an occupation tax, municipalities throughout the state have enacted one or the other or both of these revenue measures. Thus, the citizen of one municipality may not be subject to the same tax burden for the privilege of doing business as is the citizen of another municipality within the state.

In ***Love v. Dunaway***, 28 N.M. 557, 564, 215 Pac. 822 (1923), the New Mexico Supreme Court, referring to Article VIII, Section 1, of the Constitution of New Mexico, said:

". . . The provision does not require that the rate of assessment shall be uniform and equal for all purposes throughout the state, but that the rate must be uniform and equal throughout the locality in which the tax is levied, and if the levy is for a state purpose, then the rate must be uniform and equal in all parts of the state; if for a county purpose, the rate must be equal and uniform throughout the county in which the levy is made, and so in any other taxing district."

Article VIII, Section 1, of the Constitution of New Mexico does not, therefore, require equality and uniformity between all municipalities in the state in the matter of local taxation. It is only necessary that taxes be equal and uniform within the municipality where they apply.

By: Edward R. Pearson

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