

Opinion No. 67-67

May 11, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. George E. Fettinger State Representative Otero County P. O. Box 497
Alamogordo, New Mexico

QUESTION

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Is the Housing Authority of the City of Alamogordo exempt from the payment of both city and state sales taxes on all utilities, including telephone service purchased from Mountain States Telephone Company under Section 14-46-19, N.M.S.A., 1953 Compilation (P.S.)?

CONCLUSION

See analysis.

OPINION

{*98} ANALYSIS

Section 14-46-19, supra, provides:

"A housing project as herein defined, is declared to be public property used for essential public and governmental purposes and, being property of a city of this state, it is exempt from taxation."

Generally, when the word "taxation" is used in the Constitution or a statute of New Mexico, it refers to taxes of a general nature applied on an ad valorem basis. {*99} It does not apply to excise taxes. See **Altman v. Kilburn**, 45 N.M. 453, 116 P.2d 812, and **State v. Ingalls**, 18 N.M. 211, 135 Pac. 1177. The school tax and the municipal sales tax are both considered to be excise taxes. Therefore, it is our opinion that a housing project is not exempt from these two taxes because of the exemption contained in Section 14-46-19, supra.

It should be pointed out that the New Mexico school tax and the municipal sales tax are taxes levied on the privilege of doing business. The tax liability, if any, would be on the persons furnishing the utilities to the Housing Authority of the City of Alamogordo. The question then arises whether there is an exemption from the New Mexico school tax or the municipal sales tax which would exempt gross receipts received from utilities furnished to the Housing Authority. We call your attention to Section 72-16-5 (B),

N.M.S.A., 1953 Compilation, which exempts sales of tangible personal property made to the State of New Mexico or any of its political subdivisions. A similar exemption is contained in the City of Alamogordo ordinance providing for a municipal sales tax. The Bureau of Revenue has always considered water, gas and electricity as tangible personal property. See Opinion of the Attorney General No. 59-130 dated August 28, 1959 and Emergency School Tax Regulation No. 4.6. Thus, if the Alamogordo Housing Authority is a political subdivision of the State of New Mexico, gross receipts derived from the sale of water, gas and electricity to the housing authority would be exempt from the New Mexico school tax and the Alamogordo municipal sales tax. The gross receipts derived from providing a telephone service are not considered a sale of tangible personal property and would not be exempt even if the Housing Authority were a political subdivision.

Under the Municipal Code, a municipality has the authority, by Section 14-46-5, N.M.S.A., 1953 Compilation (P.S.), to create as an agent of the city a housing authority with the power to carry out some of the provisions of the municipal housing law.

It is our opinion that under the Municipal Code a Housing Authority is an agent or an instrumentality of the municipality creating the authority and should receive the same tax exemption status as the municipality. See also Opinion of the Attorney General No. 61-112 dated October 31, 1961. Under Section 72-16-5 (B), *supra*, a municipality is a political subdivision and sales of tangible personal property are exempt from the New Mexico school and municipal sales taxes. It is our opinion that the Housing Authority should receive the same exemption. This exemption would not apply where the tenants pay directly for the utilities to the utility companies. It is our understanding the Alamogordo Housing Authority is paying for all utilities used.

It is therefore our opinion that the gross receipts received from furnishing water, gas and electricity to the Alamogordo Housing Authority would be exempt from the New Mexico school tax and the Alamogordo municipal sales tax. The gross receipts received from the furnishing of telephone services would be subject to both taxes.

By: Tom Overstreet

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