

Opinion No. 67-96

July 28, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: L. J. Chambard, Chairman Public Service Commission State Capitol Santa Fe, New Mexico

QUESTION

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May a utility subject to the fee prescribed under Section 68-6-8, N.M.S.A., 1953 Compilation, in calculating its fee for the 1967 calendar year utilize the exemption to that section which was added by Chapter 96, Laws 1967, Section 6?

CONCLUSION

No.

OPINION

{*140} ANALYSIS

Section 68-6-8, N.M.S.A., 1953 Compilation, as amended by the 1967 Legislature provides as follows:

"68-6-8. INSPECTION AND SUPERVISION FEES. -- Each utility doing business in this state and subject to the control and jurisdiction of the commission with respect to its rates or service regulations, shall pay annually to the state a fee for the inspection and supervision of such business, an amount equal to one-half of one percent (1/2%) of its gross receipts from business transacted in New Mexico for the preceding calendar year. Said sum shall be payable in equal quarterly installments on or before the last day of February, May, August and November, in each year. Such inspection and supervision fees shall be paid by such utilities in addition to any and all property, franchise, license, intangible, and other taxes, fees and charges now or hereafter provided by law. No similar inspection and supervision fee shall be measured by the amount of the gross receipts of each such utility for the calendar year next preceding the date herein fixed for the payment of the same. In the case of utilities engaged in interstate business, the fees shall be measured by the gross receipts of such utilities from intrastate business only, for such preceding calendar year, and not in any respect upon receipts derived wholly or in part from interstate business. **No supervision or inspection fees shall be charged on the gross receipts from the sale of gas, water or electricity to a utility regulated by the commission for resale to the public.**"

The question presented is whether a utility which is required to pay those fees **this year**, that is, during 1967, may discount from his total gross receipts the amount gained from sales to regulated utilities for resale pursuant to the exception appended to the statute during the 1967 legislative session. It is our opinion that the fees for 1967 must be computed for 1967 with the gross receipts from sales to regulated utilities for resale included in the total gross receipts of company.

Before explaining the basis for our conclusion, several facts should be noted. First, the amendment to Section 68-6-8, N.M.S.A., 1953 Compilation was made in Laws 1967, Chapter 96, Section 6 which became effective on approval *{*141}* of the Governor on March 15, 1967.

Second, it should be noted that under Section 68-6-8, N.M.S.A., 1953 Compilation, the fee to be paid in any given year is calculated at the beginning of the year on the basis of gross receipts for the past year. It is only the payment of the fee which is permitted to be made in four installments spread throughout the year.

Examining the question posed in view of these facts, the reason for the conclusion is clear. To reach a contrary conclusion it would be necessary to give the amendment retroactive effect. Our courts have stated numerous times that a law should not be given retroactive effect unless the legislature has clearly indicated so. **Clark v. Ruidoso-Hondo Valley Hospitals**, 72 N.M. 9, 380 P. 2d 168 (1963); **Bradburg and Stamm Construction Co. v. Bureau of Revenue**, 70 N.M. 226, 372 P. 2d 808 (1962). There is absolutely no indication contained in Laws 1967, Chapter 96 that the Legislature intended any retroactive application of the act.

In order to avoid a retroactive application of the amendment, we conclude that the current year's fees which were calculated at the beginning of the year, would not be affected by the amendment.

By: Myles E. Flint

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