

Opinion No. 16-1846

July 17, 1916

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. H. C. Williams, Village Clerk, Estancia, New Mexico.

Villages cannot exact occupation tax from insurance agents, nor impose a tax upon a livery business with automobiles.

OPINION

{*407} I am in receipt of your letter of the 15th instant asking for the opinion of this office as to whether fire and life insurance agents can be compelled to pay a village occupation tax. I have no hesitation in saying that such a tax cannot be imposed by a village government organized under the act of 1909, which now appears as Sections 3764 to 3778, both inclusive, of the Codification of 1915. Insurance agents are required to pay the sum of \$ 10 per annum under the provisions of Section 3301 of the Codification, making application for a license to the assessor of the county in which the business is to be done.

Referring to your former letter of the 13th instant in which you inquired whether a village could impose a tax upon a person doing a livery business with automobiles, I have to say that it is the opinion of this office that there is no statute which would authorize the imposition of such a tax. Section 3775 empowers the board of trustees of a village to regulate vehicles kept for hire, but there nowhere appears any authority for their imposing an occupation or any other tax upon vehicles. This view of the law is strengthened by an examination of the 13th to the 16th, both inclusive, sub-divisions of Section 3564, which relate to the government of cities. It will be seen that a city council is authorized to "license, tax and regulate" different businesses. Had it been the intention of the legislature to authorize a village to license and tax vehicles kept for hire, that intention would have been as clearly expressed as in the case of cities. We must, therefore, conclude that the word "regulate" as used in Section 3775 does not authorize the board of trustees to license and tax.