

Opinion No. 35-1073

June 25, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. C. N. Higgins, City Attorney, Las Vegas, New Mexico.

{*71} We have your letter of June 18th asking for an opinion from this office as to whether or not insurance agents, attorneys and federal saving and loan associations are liable to a city occupation tax.

We interpret the questions in your letter to mean whether or not the city has the power to levy an occupation tax against persons engaged in the above mentioned businesses for, of course, the question as to whether or not such persons are actually liable for said tax will depend wholly upon the terms of the ordinance of any particular municipality.

The right of a municipality to levy any occupation tax at all is given by Section 90-501 of the New Mexico Statutes Annotated, Compilation of 1929. Section 90-502 of the 1929 Compilation gives a further right to municipalities to license said occupations. Chapter 179 of the Laws of 1933 provides that any person or business paying an occupation tax under Section 90-501 may not also be taxed under Section 90-502.

The provisions of Section 90-501, supra, are undoubtedly broad enough to enable municipalities to collect occupation taxes from all of the above mentioned occupations unless they are specifically exempt by some other sections of the law.

Referring first to insurance agents, we find that Section 71-127, New Mexico Statutes Annotated, 1929 Compilation, provides that every insurance company doing business in the State of New Mexico shall pay certain fees set forth therein and the latter part of said section then provides as follows:

"The aforesaid taxes, licenses {*72} and fees shall be in lieu of all other taxes, licenses and fees of every kind imposed by by this state or any political subdivision thereof on any insurance company or agent thereof excepting the regular state, county and city taxes on property located in the State of New Mexico."

This section, therefore, specifically exempts agents of insurance companies in this state from paying any occupation tax as such agents and they are, therefore, not subject to a city occupation tax unless the provisions of this section were repealed by implication by the provisions of Section 90-501, supra. We do not believe that such repeal was effected.

Section 90-501 does not mention insurance agents specifically although the general language is certainly broad enough to cover them. However, since repeals by implication are not favored and as a general rule the general statute covering a certain

subject does not repeal a special statute, we hold that insurance agents are still exempt from municipal occupation taxes under the provisions of Section 71-121, supra.

As to attorneys at law we find no special statute which we feel exempts such persons from the payment of a municipal occupation tax and if the particular municipal ordinance specifically levies an occupation tax on attorneys we feel that it is valid under the provisions of Section 90-501, supra.

As to your question with regard to a municipal occupation tax on the First Federal Savings and Loan Association, we are not familiar with the organization of this corporation. We do not know whether it is possibly a federal agency. If you will give us a detailed statement of the set-up of the corporation, its manner of organization and all details which have a bearing as to whether or not it is a federal agency, we will then be glad to give you a further opinion on its liability for municipal occupation tax.

By: J. R. MODRALL,

Asst. Atty. General