

Opinion No. 37-1731

August 5, 1937

BY: FRANK H. PATTON, Attorney General,

TO: Mr. Loren Allen City Clerk and Treasurer Portales, New Mexico

{*147} This is in response to your letter dated July 21st wherein you make certain inquiries relating to drummers, peddlers or agents of firms from without this state coming into this state and at the same time bringing wares by truck to be sold and delivered at the time the order was taken. Specifically you inquire whether such persons are subject to an occupation license imposed by the city.

In the first instance I might state that it is outside of the jurisdiction of this office to advise municipalities and respectfully suggest that the matter be taken up with your city attorney.

{*148} However, since we are writing you we might state that we understand the law governing these matters to be as follows: If a local merchant orders wares from outside the state and the agent of the out of state firm merely delivers the ordered goods to the purchaser, in such a case it is doubtful whether an occupation tax may be imposed. However, if the agent of the foreign firm carries the wares with him and in substance peddles the same from his truck or automobile to the purchaser, then we would be inclined to say that he would be subject to payment of the occupation tax.

True, the law is not too well established on these matters, particularly in this state, and we would suggest that you make a test case out of some fact situation such as the one presented in order that a court of competent jurisdiction might properly pass on the matter once and for all.

By: FRED J. FEDERICI,

Asst. Atty. Gen.