

Opinion No. 39-3346, S. T. 265

December 4, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. G. L. Reese, Jr., District Attorney, Carlsbad, New Mexico.

{*123} Since receiving your letter of November 29, I have made a thorough check of the opinions in this office and find that we have never given any written opinion with respect to taxability of music teachers who give instructions at an agreed price per week or per month.

It has always been the understanding of the office and the department, however, that all such teachers, as well as dancing teachers and teachers conducting the schools of every nature, are taxable under subparagraph H of subsection 4 of Section 141-1705, 1938 Supplement, referred to by you.

A reading of the statute as a whole will disclose a studied effort on the part of the Legislature to tax everything under the sun, except the matters specifically exempted by the statute, including salaries. Therefore, unless such a payment can come under the heading of salary, as contemplated in the statute, it must be taxable either under said subparagraph H as service rendered of a professional, technical, or scientific nature paid on a fee basis, or under subparagraph I of the same section as "any {*124} other business in which services (not professional) are performed on a price or fee basis."

By: A. M. FERNANDEZ,

Asst. Atty. Gen.