

## Opinion No. 41-3691

January 15, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{\*27} Your letter of January 10 requests an opinion as to whether or not a properly municipally licensed business has authority to practice that business outside of the municipal limits without complying with county regulations. This question is answered with particular reference to municipal and county occupation licenses, and with regard to real estate and insurance agents.

Insurance agents, both life, fire, and casualty, are exempt from paying either county or municipal occupation licenses. See Chapter 23, Laws of 1939, and Attorney General's Opinion No. 3369, written by Filo M. Sedillo, Attorney General, on December 29, 1939, and Opinion No. 3378 written by Fred J. Federici, Assistant Attorney General, on January 5, 1940.

It is the opinion of this office that real estate agents and other businessmen who do a state-wide or county-wide business must have an occupation license in every municipality in which they operate, if that municipality has passed an ordinance levying an occupation tax. See Opinion No. 1971 dated June 10, 1938, written by Fred J. Federici, Assistant Attorney General. The municipalities clearly have this power under Chapter 145, Laws of 1937. Inasmuch as the funds are used in each separate municipality, I am of the opinion the double taxation provisions of the law (Section 81-114, New Mexico Statutes, Annotated, 1929 Compilation) are not violated. See Opinion No. 1088 dated July 11, 1935, written by Quincy D. Adams, former Assistant Attorney General.

There is the additional question as to whether a person with a county occupation license may operate within a municipality without first paying the municipal occupation tax, and reversed, whether a person with a municipal occupation license may operate throughout the county without first paying a county occupation tax. I am of the opinion that Chapter 145, Laws of 1937, did not repeal Sections 81-101 to 81-117, supra; although Section 81-112 may have been repealed by Chapter 73, Laws of 1933. See Opinion No. 1107 dated July 25, 1935, written by Mr. J. R. Modrall, former Assistant Attorney General, that persons doing the types of businesses referred to in Sections 81-101, et seq., and Chapter 145, Laws of 1937, must have occupation licenses in each political subdivision in which they operate. In other words, certain businesses situated within the corporate limits of cities, towns, villages and counties may be required to pay two or more occupation taxes. This would not, in my opinion, constitute double taxation in the objectionable sense because the taxes are paid to different branches of the state government. See 37 C. J. 183, and 61 C. J. 137.

Trusting that the foregoing sufficiently answers your questions, I remain,

By GEO. H. HUNKER, Jr.

Asst. Atty. Gen.