

Opinion No. 42-4139

August 18, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. A. J. Coats Chief Supervisor New Mexico Dry Cleaning Board Box 1035 Santa Fe, New Mexico

{*231} By your letter of August 13, 1942, you have requested an opinion of this office as to whether or not a Colorado dry cleaning establishment which solicits business in New Mexico, but claims to be engaged in interstate commerce, is required by the Dry Cleaning Law (Chapter 198, Laws of 1941) to obtain a license and pay the annual fees.

It is regrettable that some concerns attempt to evade public health and safety laws on the ground that they are engaged in interstate commerce. It is unnecessary to decide whether the concern in question is engaged in interstate commerce, for even if it is, the State's police powers in matters of public health are such as to allow this State to impose what might be a burden on interstate commerce. See *Wagner v. City of Covington* 251 U.S. 95, 64 L. Ed 157, 40 S. Ct. Rep. 93.

The Dry Cleaning Law is clearly a public health measure, and in view of the following section unequivocally requires a non-resident dry cleaning concern to be licensed and to pay annual fees. Section 2 (f) Chapter 198, Laws of 1941 provides:

"(f) 'Non-resident outlets' includes any place or vehicle where the services of dry cleaning, wet cleaning as a process incidental to dry cleaning, dyeing, spotting and/or finishing any fabric is rendered for hire or is sold, resold, or offered for sale; and also includes the acceptance of any fabric to be dry cleaned, dyed and/or pressed where the said work is actually done and performed outside the confines of the State of New Mexico."

In conclusion then, we will say that it is our opinion that your question should be answered in the affirmative.

Trusting that the foregoing sufficiently answers your inquiry, I am

By GEO. H. HUNKER, Jr.

Asst. Atty. General