

**Opinion No. 42-4171**

October 23, 1942

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

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

{\*265} We are in receipt of your letter of October 21 in which you inquire whether or not, by the payment of current occupational taxes, business houses thereby relieve themselves of the obligation to pay occupational taxes for previous years.

From the information contained in your letter, I can see no basis for the contention made. The duty to pay occupational taxes duly assessed and levied for prior years will continue until paid or discharged, as provided by law. I have examined Chapter 145, Laws of 1937, being the statute which empowers municipalities to impose occupational taxes, and find no limitation upon the right of the municipality to collect such taxes.

While this Act, rather than setting up in detail the procedure for assessing and collecting occupational taxes, grants this power to the municipality, it does make the tax a lien in favor of the municipality. The author of Corpus Juris at 61 C. J. 944, says:

"Generally speaking, a lien for taxes regularly levied can be discharged or extinguished only by payment or in some manner recognized or authorized by statute."

However, it would be noted that occupational taxes assessed prior to 1937 cannot be collected as Chapter 73 of the Laws of 1933 and Chapter 33 of the Special Session Laws of 1934, which statutes were superseded by Chapter 145, Laws of 1937, were held invalid in their entirety in *Safeway Stores vs. Vigil*, 40 N.M. 190, 57 P. (2d) 287.

It is therefore my opinion that {\*266} the payment of occupational taxes for the current year will not relieve places of business of the payment of unpaid occupational taxes for the year 1937 and subsequent years, unless some specific limitation appears in the ordinance providing for the assessment and levy of occupational taxes in Mosquero.

By ROBERT W. WARD,

Asst. Atty. General