

## **Opinion No. 79-09**

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**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Senator Joseph E. Gant, New Mexico State Senator, Executive-Legislative Bldg., Santa Fe, New Mexico 87503

### TAXATION

The repeal of statutes specifically authorizing counties to enact occupational taxes does not preclude counties from imposing such taxes as they may do so pursuant to statutes authorizing municipalities to enact taxing ordinances.

### **QUESTIONS**

If Sections 7-22-1 through 7-22-14 NMSA 1978, which authorize counties to enact an occupation tax, are repealed, would counties, nevertheless, have the authority to enact such a tax?

### **CONCLUSIONS**

Yes.

### **ANALYSIS**

Sections 7-22-1 to 7-22-14 NMSA 1978 authorize counties to impose various occupational taxes and license fees. An act repealing these statutes would not, however, preclude a county from adopting ordinances imposing such fees and taxes.

### **OPINION**

A county is a political subdivision of the state possessing only those powers expressly granted by the legislature and those powers as may be necessarily implied therefrom. **El Dorado at Santa Fe, Inc. v. Board of County Commissioners v. Central Clearing House, Inc.**, 89 N.M. 313, 551 P.2d 1360 (1976). In Section 4-37-1 NMSA 1978, the legislature grants to counties "the same powers that are granted municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties."

Municipalities are expressly authorized by the legislature to impose license fees and occupational taxes. Section 3-38-1 NMSA 1978 provides that a municipality may, by ordinance, regulate business and impose a licensing fee reasonably related to the cost

of the regulation. The authority of a municipality to enact ordinances imposing such licensing fees has been upheld by the Supreme Court. **City of Lovington v. Hall**, 68 N.M. 143, 359 P.2d 769 (1961). Section 3-38-3 NMSA 1978 provides that a municipality may impose an occupational tax on any kind of business not licensed by the municipality under another law, and defines the maximum annual tax which may be imposed. The authority of a municipality to impose such taxes has also been upheld by the Supreme Court. **Town of Farmington v. Miller**, 64 N.M. 330, 328 P.2d 589 (1958). Thus, in the absence of any inconsistent law, counties would also be expressly authorized to impose licensing fees and occupational taxes in accordance with Section 4-37-1, **supra**.

An act repealing the specific statutory authority of counties to impose license fees and occupational taxes would not implicitly repeal a county's authority to exercise those powers pursuant to the statutes governing municipalities. Repeals by `{*22}` implication are not favored and the the repeal of Sections 7-22-1 to 7-22-14, **supra**, without a clear expression of legislative intent to limit the authority of counties, would not prevent a county from imposing fees and taxes under Sections 3-38-1 and 3-38-3, **supra**. See, e.g. **Galvan v. City of Albuquerque**, 87 N.M. 235, 531 P.2d 1208 (1975). A county would, however, have no more authority in this regard than would a municipality and whatever legislative restrictions are found in Sections 3-38-1 and 3-38-3, **supra**, would apply to counties as well.

#### **ATTORNEY GENERAL**

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