

Opinion No. 47-5006

April 8, 1947

BY: C. C. McCULLOH, Attorney General

TO: Jack McGarry Assistant District Attorney Carlsbad, New Mexico

{*27} In your letter of April 3, 1947, you request the opinion of this office on several questions based upon Sections 62-501 to 62-504, inclusive, New Mexico Statutes 1941 Compilation.

You set forth your question as follows:

1. The County Commissioners would like to know if Article 5 Chapter 62 applies to persons who own a liquor license to give dances?
2. What fee does the Justice of the Peace charge for issuing a special license to give a dance and what disposition is made of that fee?
3. If Article 5 of Chapter 62 {*28} applies to persons who own a liquor license to give dances who pays for the special deputy to police the dance?

I shall answer your questions in the manner in which you set them out. The answer to your first question is in the affirmative. I do not see where the fact that a person owns a liquor license would give him any rights under the sections set out above, in other words, if a person owns a liquor license and wants to give a dance he would still have to comply with Sections 62-501 to 62-504, inclusive.

The answer to your second question is that **no** fee is charged by the Justice of the Peace for issuing a special license to give a dance. The reason for this answer is that the statute does not make any provision for collecting a fee. While the 1941 Compilation shows an Attorney General's opinion in which it was stated that a \$ 10.00 fee was payable, that opinion was written under a section of the law which was repealed in 1939. I might call your attention to Section 62-104, New Mexico Statutes, 1941 Compilation, provides a license tax upon the owners or operators of premises used as a place of public amusement such as public balls.

The answer to your third question is that the applicant would pay for the special deputy to police the dance. Section 62-501, New Mexico Statutes, 1941 Compilation, provides that the deputy is appointed in those cases where the person soliciting a license is not a competent person. No provision is made for paying such officer and no appropriation can be found which authorizes payment. Under those circumstances I believe that the applicant is the person who should pay the fee for the special deputy to police the dance.

By WM. R. FEDERICI,

Asst. Atty. General