

Opinion No. 49-5225

June 21, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: N. R. Reese District Attorney Fifth Judicial District Roswell, New Mexico

Re: Retail Liquor Licensees Delivery by Taxicab.

OPINION

{*54} Reference is made to your letter dated April 13, 1949, wherein you make inquiry as to the legality of retail liquor licensees making delivery of alcoholic liquors by taxicab, the order of purchase having been given to the retailer over the telephone by the purchaser.

This office has referred this question to Mr. Tom O. Montoya, Chief, Division of Liquor Control, who informs us in brief as follows:

"As long as the sale is consummated on the premises of the liquor licensee the manner in which the delivery is made would be of no consequence as long as the fairtrade price of the alcoholic liquors was paid. The licensee could operate his own delivery service, contract for such service, paying for same out of his own pocket or permit the purchaser to pay the taxicab fare. * * * It would be unlawful for the cab driver to pay for the liquor and resell it to the customer since the sale would not be consummated at the licensee's place of business. We would view this as a cab driver selling liquor without a license."

I concur in Mr. Montoya's opinion above quoted. An examination of the statutes pertaining to intoxicating liquors discloses that Section 61-1014 pertains to this question, which in part reads as follows:

"The licenses of retailers shall {*55} allow them to sell and deliver alcoholic liquors * * * * ."

Further, Section 61-1009 of the 1941 Compilation provides:

"It shall be a violation of this act for any retailer to * * *

(c) To sell any alcoholic liquors at any place other than his licensed premises."

From the above, it is clear that the retailer has the authority to make delivery by any lawful means available and convenient to him, but it is mandatory that prior to any delivery the sale for such liquor to be delivered must be consummated on the premises of the licensee. Lawful sales can be consummated by telephone orders made by bona fide purchasers of lawful age and otherwise qualified under the Intoxicating Liquor

Statutes, provided that the telephone call requesting purchase is made by the purchaser to the premises of the retail liquor licensee, thereby consummating the sale on the licensee's premises.

It is, therefore, my opinion that a retail liquor licensee may make deliveries of alcoholic liquors by taxicab or otherwise as the result of a sale consummated by a telephone conversation between a customer having the lawful qualifications to purchase liquor and the retailer, provided that the telephone conversation is held at the licensed premises of the retailer.

Trusting the foregoing sufficiently answers your inquiry, I am