

Opinion No. 54-6050

December 6, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable C. C. Chase, Jr. District Attorney Las Cruces, New Mexico

{*522} In your letter of November 17, 1954, you request the opinion of this office as to whether or not an ordinance adopted by the Village of Greentree, New Mexico, prohibiting the sale of liquor on Christmas Day, is valid.

A similar question was considered by this office in its Opinion No. 4621, dated December 5, 1944, a copy of which is herewith enclosed.

In that opinion, we reached the conclusion that a municipality is without authority to pass an ordinance prescribing the hours during which liquor may be sold, in variance with the hours provided by § 61-1014, N.M.S.A., 1941. We are of the opinion that the reasoning expressed in Opinion No. 4621 is applicable to the Greentree ordinance in question, for the reason that § 61-1014, in addition to prescribing the hours during which intoxicating liquors may be sold, also prescribes the days upon which such liquors may be sold, and excludes only Sundays and the days of general, state or city elections.

You call our attention to the decision of the Supreme Court of New Mexico in the case of **City of Clovis v. Dendy**, 35 N.M. 347, in which it was held that a municipal ordinance prohibiting the sale of liquor within the municipality of Clovis was a proper exercise of the police powers granted to municipalities by § 90-901, 1929 Comp. (§ 14-2201, N.M. {*523} S.A., 1941). We are of the opinion that that case has no applicability to this situation.

You will note that the ordinance involved in the Dendy case was Section 1 of Ordinance No. 238 of the City of Clovis, adopted on April 12, 1927, at a time when the sale of intoxicating liquor was prohibited throughout the United States. Our present liquor laws superceded that ordinance, as well as other statutes of prohibition, and precluded municipalities from regulating the sale of alcoholic liquors, except in conformance with the local option provisions contained in § 61-401, N.M.S.A., 1941. Thus, it is no longer possible for municipalities to regulate the sale of liquors without first having local option elections.

Trusting that the foregoing will answer your question satisfactorily, I am

By: Henry A. Kiker, Jr.

Assist. Attorney General