

Opinion No. 55-6203

June 24, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard F. Rowley, District Attorney, Ninth Judicial District, Clovis, New Mexico

Replying to your letter of May 11th requesting an opinion concerning the application of Chapter 112, Laws of 1955, to the Veterans of Foreign Wars in Clovis, New Mexico, please be advised as follows:

In your letter you indicated that the Veterans of Foreign Wars Post in Clovis, owned a Federal liquor license stamp. Under the provisions of Section 2 of Chapter 112, Laws of 1955, it is provided that the mere ownership of a Federal license by a person not licensed under the laws of this State, is prima facie evidence that such person is violating the laws of the State of New Mexico concerning the sale of alcoholic beverages.

It is our opinion that this ownership of such license would cast upon the defendant in any case brought under the terms of this statute, the burden of going forward with the evidence to prove that the said defendant did not fall within the provisions of the statute, namely, with operating a club for profit. *State vs. Chavez*, 58 N.M. 802, 277 P. 2d 302.

The apparent purpose of Chapter 112, Laws of 1955, is to provide a means by which clubs organized under the provisions of Sections 51-14-1 to 51-14-9, N.M.S.A., 1953, could provide members with alcoholic beverages in dry counties, and we feel that in order to come within the exception of this statute of operating not for profit, that an organization would have to be incorporated under the New Mexico statutes providing for incorporation of non-profit organizations. Your attention is called to the fact that the Supreme Court has placed strict construction upon charitable organizations in cases which come within the exception of Article VIII, Section 3 of the Constitution. *Albuquerque Alumnae Assn., of Kappa Kappa Gamma Fraternity vs. Tierney*, 39 N.M. 135; *Church of the Holy Faith, vs. State Tax Commission*, 39 N.M. 403. It appears to this office that the Supreme Court would very likely strictly construe the term "non profit" operation under the provisions of Chapter 112, Laws of 1955.

As to the facts named in your letter as to how the club operates, to-wit: liquor is brought to the club by the various members and left at the club, the club charges for set-ups and service, including a 15c service charge for cooling each can of beer and the serving of the same, the proceeds from the charges made are placed in the club's bank account, and the custodian or manager of the building is paid out of the club's treasury, and that said custodian or manager is a full time employee for all practical purposes and no individual profits to any degree from any of the operations of the club, and that all excess payments of operation is deposited in a savings account and used for the general up-keep of the club property and for the uses of the club program, we express

no opinion as to whether these facts would exempt such organization from prosecution as a violator of the New Mexico Liquor Laws.

We feel that all these facts presented should be to the jury, and each case must stand on its own facts, as they constitute elements which should be proved by a defendant in order to make itself come within the exception, namely, a non-profit organization under the terms of this statute.

With kindest personal regards, we remain

By: Paul L. Billhymer

Assistant Attorney General