

Opinion No. 56-6384

February 8, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Hilton A. Dickson, Jr., Chief, Division of Liquor Control, Bureau of Revenue, P. O. Box 1540, Santa Fe, New Mexico

You have asked this office for an interpretation of §§ 46-5-24 and 46-5-25, N.M.S.A., 1953 Compilation. Specifically, you want an interpretation of the language ". . . not more than one dispensers or one retailers or one club license for each fifteen hundred **or major fraction thereof** population in such municipality . . . (or unincorporated area)". This language is found in § 46-5-24 in both subsections (a) and (b) thereof.

You desire to know if the language contemplates a license for each fifteen hundred persons plus an additional license if the population is over half of fifteen hundred, i.e. 751, or if the phrase "or major fraction thereof" contemplates any significant number of persons. You state that you do not feel that Attorney General's Opinion No. 5491, 1951-52, is responsive to the instant question. With this, I agree, and at this time will not comment on said opinion since the instant question is at variance with the question submitted.

It is the opinion of this office that "a major fraction thereof" could only mean more than onehalf. Therefore, as an example, if the population of an incorporated municipality were 2,251 persons, you could issue a maximum of two licenses for that municipality, assuming all other requirements were present. It follows that any number less than 750 would not constitute a major fraction of fifteen hundred persons.

Your second question is directed to the following language contained in § 46-5-25, N.M.S.A.: "Provided further that the population of any incorporated municipality or county shall, for the purposes of this act, be deemed to be the population thereof as last determined by the Bureau of Census." You ask what census is determinative of the population figures and if it is the Federal Census, must you only consider the last Decennial Census.

In Attorney General's Opinion No. 5396, 1951-52, it was stated that the Federal Census should be used by your office and with this we are in agreement. Our Legislature, in using the term "Bureau of Census" could, in our opinion, only have been referring to the Federal Bureau of Census. Title 13, United States Code Annotated, § 141, as amended, provides that the Secretary of the Bureau of Census shall in the year 1960 and every ten years thereafter take a census of population in each state etc. In § 181 of the same volume, it also provides that the Secretary of the Bureau of Census may make surveys deemed necessary to furnish annual and other interim current data on the subjects covered by the censuses provided for by this title.

Since the Legislature of this State, in § 46-5-25, supra, used the phrase "as last determined by the Bureau of Census", it is our opinion that you may take the latest determination of the Bureau of Census as the population figure to be applied to any given area. If a special census is taken by the Bureau of Census in an off year and the same is certified by the proper official of the Bureau of Census, it seems clear that you may use that figure as the population count for the area for which the special census was conducted.

By J. A. Smith

Assistant Attorney General