

Opinion No. 56-6503

July 26, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

In reply to your letter of June 27, 1956, wherein you raise several questions concerning the interpretation of §§ 46-5-20 and 46-10-14, N.M.S.A., 1953, the following is submitted for your consideration.

In reply to your first question, which is, "Does an interstate commercial airline company, flying over and landing within the State of New Mexico, need to apply for and be issued a New Mexico Dispenser's License prior to giving or selling alcoholic beverages while in flight?", and involving § 46-5-20, and whether or not it applies to interstate airlines, the answer is no. A careful reading of the section indicates that the intent of the Legislature was to limit the section to companies dealing with railroads and under the rule of statutory construction, "where the language of a statute is expressly made applicable to a particular situation or thing or to one species of a larger group, subsequent events will have no effect to enlarge the meaning of the statute." Sutherland, Statutory Construction, Volume 2, page 551.

The fact that it is an interstate carrier does not remove it from reasonable regulation by the State, such regulation being subject to the time honored test.

"Does the proposed regulation amount to an interference or undue burden on interstate commerce?"

Again the answer is no, and a long line of cases have well established the right of a State to regulate the sale of liquor on interstate carriers, as a valid exercise of police power in the interest, the welfare and safety of its people. Further your attention is directed to § 46-5-1 of N.M.S.A., 1953, which states in essence that the sale of all alcoholic liquors in the State shall be licensed and regulated and controlled to protect the public health, safety and morals. Again at § 46-10-1, N.M.S.A., 1953, it makes it a violation of the law for a person to sell without a license.

We conclude that there is no provision in the law for Commercial airlines to sell alcoholic beverages, and we recommend that § 46-5-20 of the statute be revised by early legislative enactment to enable this valid exercise of the States' rights and powers -- namely, to require interstate flights serving liquor to procure a New Mexico Dispenser's License.

In reply to your second question, which is, "Is a railroad or motor vehicle transportation company, duly licensed by the State Corporation Commission and operating in

interstate commerce through the State of New Mexico, required to comply with the prohibitions concerning Sunday sales to passengers en route across the State?", and where you inquire as to whether or not § 46-10-14, dealing with Sunday sales, applies to interstate carriers, the answer is yes. Attention is directed to Rapp v. Venable, 15 N.M. 509, where as early as 1910 the Courts adopted the principle:

"State legislatures have power to regulate or prohibit absolutely the sale of intoxicating liquors and may prohibit the manufacturing of them."

From these it would be well to point out that the Court held in the case of Alamogordo Imp. Co. v. Prendergast et al., 45 N.M. 40, decided November 13, 1940, that:

"A citizen has no inherent right to sell intoxicating liquors and liquor business is attended with danger to the community and is subject to regulation or prohibition."

Thus keeping in mind that the sale of liquor is a privilege and not a right, that it is further subject to State regulation or by authority delegated to the municipalities, it follows that any seller of liquors would be subject to State and local prohibitions as to Sunday sales, and a failure to comply would constitute a violation of the law subject to the penalties therein provided.

This opinion repeals such conflicting parts of Opinion No. 1817, dated November 15, 1937, concerning the right to regulate Sunday sales and other local rights and options.

We trust this fully answers your inquiry.

By Harry E. Stowers, Jr.

Assistant Attorney General