

## **Opinion No. 57-259**

October 10, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Mr. Paul W. Robinson, District Attorney, Second Judicial District, County Court  
House, Albuquerque, New Mexico

### **QUESTION**

#### QUESTION

". . . whether a person holding a liquor dispenser's license for premises located more than one mile and a half from the exterior boundary of a United States Army post, prior to enactment of Laws of 1941, Chapter 4, may transfer that license to a structure within one mile and a half of such post?"

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

Section 46-5-27, N.M.S.A., 1953 Compilation, provides as follows:

"Except as to existing licenses and renewals thereof, the chief of division of liquor control of the New Mexico Bureau of Revenue shall hence forth issue no retail, dispenser or club license for the sale of alcoholic liquor within any area adjacent to and not exceeding one and one-half miles in any direction measured from the exterior boundaries of any United States army post where United States military troops are domiciled."

The question above stated arises from the initial phrase of the statute, "Except as to existing licenses and renewals thereof, . . ." Prior to 1941, control of sales of alcoholic beverages in areas adjacent to military installations was not distinguishable in the purview of the Liquor Control Division from any other area not suffering specified restrictions, such as schools and churches. § 46-5-26 Stats. supra. Under the provisions relating to National Guard encampments and military posts, § 9-9-3, we find that a commanding officer, in the exercise of discretion, could restrict sales of "spirituous liquors" within one mile of the post or parade grounds. This latter restrictive power would in any case, however, be limited to the period of encampment by the Guard, and further, would effectuate dry areas in accordance with changing needs, as determined by the

commander. Section 46-5-27, supra, also, is directed to areas where United States military troops are domiciled and not state militia.

The 1941 law prohibits the **issuance** of any of the three categories of licenses provided within a zone one and one-half miles wide surrounding the exterior boundaries of army posts. No mention is made, however, of transfers of existing licenses to within this prohibitive area and it is this consideration which brings forth the question above stated.

Section 46-5-16 provides generally for the transfer of existing liquor licenses from one location to another. Herein is found provisions for posting public notice and action by the local governing body. No specific limitations or restrictions are provided in this section except as are exercisable within the discretion of the Chief of the Liquor Division or local governing body.

With no additional aid found by reference to sections of the Liquor Code, in pari materia with § 46-5-27, supra, it becomes necessary to more closely examine the act itself. In this approach, consideration may well be given the title or preamble. *Leitensdorfer v. Webb*, 1 N.M. 34, affirmed 61 U.S. 176. The following language was used to express the subject of the act herein considered:

"AN ACT PROVIDING FOR **RESTRICTED AREAS** IN CONNECTION WITH THE SALE OF ALCOHOLIC LIQUORS WITHIN ONE AND ONE HALF MILES OF ANY UNITED STATES ARMY POST WHERE UNITED STATES MILITARY TROOPS ARE DOMICILED, AND DECLARING AN EMERGENCY."

Article IV, § 16, New Mexico Constitution, in providing for the title of bills, requires, in part, that:

"The subject of every bill shall be clearly expressed in its title, . . ."

In *Hewatt v. Clark*, 44 N.M. 453, 103 P. 2d 646, the Court said:

"We understand that resort may be had to the title of an act to determine the meaning of ambiguous language in the body of the act."

And in *State v. Richardson*, 48 N.M. 544, 154 P. 2d 224, the Court held that:

"For the purpose of determining the legislative intent we may look to the title, and ordinarily it may be considered as a part of the act if necessary to its construction. *State ex rel. State Corporation Commission v. Old Abe Co.*, 43 N.M. 367, 94 P. 2d 105."

Returning to the considered act, Laws 1941, Chapter 4, § 46-5-27, supra, we discover, from the title, that a "restricted area" surrounding army posts was intended by the Legislature. A construction by which existing licenses, lying both within and outside the one and one-half mile zone, could be renewed and transferred to within such zone,

gives no effect or purpose to the act. In Territory ex rel. Wade v. Ashenfelter, 4 N.M. 93, 12 P. 879, it was stated that:

"Where either of two constructions may be reasonably adopted, one of which will render an act wholly nugatory, and the other will make it effectual, the latter should be adopted."

Accordingly, it is our opinion that, ". . . existing licenses and renewals thereof . . .", was intended and does mean liquor licenses located within one and one-half miles of army posts prior to enactment of § 46-5-27, Laws 1941, Chapter 4, and further, that licenses existing outside this area or zone previous to passage of the act are not subject to transfers as above suggested.