

Opinion No. 57-275

October 24, 1957

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

TO: Hon. Juan Archibeque, State Representative, Sandoval County, Post Office Box
171, Bernalillo, New Mexico

QUESTION

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"Specifically, I would like to know whether a State Liquor License is considered as property and what statutes a liquor license has under the community property laws of the State of New Mexico."

CONCLUSION

Liquor licenses do not constitute property that can be passed upon death by will.

OPINION

ANALYSIS

State liquor licenses, as are subject of inquiry in this opinion, are respectively provided for by §§ 46-5-2 and 46-5-3, as follows:

"46-5-2. Dispenser's license. -- In any local option district any person who is the proprietor or owner of any hotel, restaurant or club, as herein defined, or any person qualified under the terms of any ordinance of any municipality or resolution of any board of county commissioners or any other person who is not disqualified by provisions of this act, may apply for, and if found qualified by the licensing authorities, whose duty it is to make a finding concerning such qualification, shall be issued a dispenser's license for the sale of alcoholic liquors.

"46-5-3. Retailer's license. -- in any local option district any person who is the proprietor or owner of any merchantile business, or who shall desire to start or to continue a business for the sale of alcoholic liquors, if found qualified under the provisions of this act by the licensing authorities, whose duly it is to make a finding concerning such qualifications, shall be issued a retailer's license for the retail sale of alcholic liquors."

In providing that certain persons may not receive licenses, § 46-5-14 sets out, in part, as follows:

"(a) The following classes of persons shall be prohibited from receiving licenses under the provisions of this act:

(1) Persons who have been convicted of two separate misdemeanor violations of this act in any calendar year or of any felony, except those persons restored to civil rights.

(2) A person who is not a citizen of the United States.

(3) A person under the age of twenty-one years.

(4) A corporation which is not duly qualified to do business in the state of New Mexico.

(5) A person who is not the real party in interest in the business to be conducted under the license for which application is made."

And with regard to assignments and transfers, § 46-5-15 provides, in part, that:

"Submit a written application for such license under oath, which application shall be in the form to be prescribed by, and shall state such information as shall be required by, the rules and regulations promulgated by the chief of division.

* * *

"The licenses provided for in this act shall be assignable and transferable to persons who are found by the chief of division to have the qualifications to receive licenses in the first instance, and whose application for transfer and approval of assignment have been approved by the chief of division in writing. No license shall be assigned or transferred while any charges of violation of this act or of any rules or regulations promulgated under the provisions of this act are pending before the chief of division, or while any licensee is charged in any court of criminal jurisdiction with any violation of this act, or during the period of any suspension of any license, or after the revocation of any license. No refund shall be made for the unexpired portion of any license.

"In case of the assignment of any license, and before the transfer thereof by the division, the assignee and applicant for transfer shall furnish a bond in like amount and in like conditions as if an original license was being applied for, and the assignee and applicant for transfer shall pay to the division the sum of five dollars as a transfer fee."

In response to your inquiry, the New Mexico Supreme Court, when confronted with the statutes of a liquor license stated in *Ex Parte Deats*, 22 N.M. 536, 166 P. 913, as follows:

"It is contended that the petitioner claims his vested rights, which the legislation would deprive him of, in other words, that the petitioner gained the right to obtain a local license to engage in that business for the period of four years. This court has recently held against this contention in the case of *Schwartz et al. v. Town of Gallup et al.*, 22

N.M. 521, 165 Pac. 345, a case not officially reported; and a like holding was had in the case of *Ex parte Everman*, 18 N.M. 605, 139 Pac. 156. In the case last cited the court held:

"A license to retail intoxicating liquor is neither a property right nor a contract. It is in no sense a contract made by the state with a party holding the license; it is a mere permit, subject to be modified, or annulled, at the pleasure of the Legislature.'

"This holding is decisive of the question under consideration and there can be no vested right as contended for."

Further consideration was given the nature of liquor licenses in *Yarbrough v. Montoya*, 54 N.M. 91, 214 P 2d 769:

"There is no inherent power in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of the state or of a citizen of the United States. As it is a business attended with danger to the community it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. *Crowley v. Christensen*, 137 U.S. 86, 11 S. Ct. 13,

and further:

"Such license is a privilege and not property within the meaning of the due process and contract clauses of the constitutions of the State and the nation, and in them licenses have no vested property rights."

Accordingly, it is our opinion that a license to sell alcoholic beverages at retail is a state created privilege in which there is vested no property or contractual right.

In view of the provisions which prohibit certain classes of persons from receiving liquor licenses, it must be concluded that each potential licensee must be considered individually and in light of his or her personal qualifications. It is pointed out, however, that the provision of § 46-5-14 (a) (5), *supra*, which restricts applications to "the real party in interest" may well be considered by the Chief of the Division of Liquor Control in the issuance of new licenses or approving assignments of existing licenses.

Thus with reference to your last inquiry, in view of the privilege status, aforesaid, it is our opinion that the community property laws of this state have no bearing on any existing interest as may emanate from an existing license to sell or dispense alcoholic beverages.