

Opinion No. 58-182

September 10, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F Pyatt, Assistant Attorney General

TO: Mr. M. W. Hamilton, Attorney, Department of Public Welfare, Santa Fe, New Mexico

QUESTION

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Are those concessions in public buildings, operated by the blind, required to obtain permits from the Department of Public Health?

CONCLUSION

If no food or drink is prepared at the concession, the permit is not required.

OPINION

ANALYSIS

You have orally stated that you have in mind concessions where food and drink are not prepared. Instead you have in mind certain stands where cigarettes, bottled soft drinks, candy bars, gum, newspapers and magazines are sold. This opinion encompasses only the above factual situation.

For the permit to be required, it would be necessary for the concession to be a "restaurant" as that term is defined in § 54-3-1A, which provides:

"Restaurant. The term 'restaurant' shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, bakeries, meat markets (either exclusively so or in conjunction with grocery stores) and all other eating or drinking establishments, as well as kitchens or other places in which food or drink is prepared for sale elsewhere."

The last cited statute, and those to which it relates, are obvious public health measures designed to protect the public against preparation of food and drink under unwholesome conditions.

It is this general purpose which must be kept in mind by us in construing § 54-3-1A, and such real purpose will prevail over the literal meaning of words used. *Town of Clayton v. Colorado & S. Ry. Co.*, 51 F.2d 977 (C.C.A. 10, N.M.)

In our opinion, the situation before us does not fall within the purpose and meaning of the statute cited. For us to hold otherwise would be to attach to the statute a strained meaning, and would result in hardship and injustice. Such interpretation should not be reached, *Scott v. United States*, 54 N.M. 34, 213 P. 2d 216, unless of course the language of the statute so demands. It does not.

Under the facts above set out, the permits are not required.