

## Opinion No. 59-180

November 3, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** W. K. Aldridge, Chief Division of Liquor Control Bureau of Revenue P. O. Box 1540  
Santa Fe, New Mexico

{\*281} This is written in reply to your recent request for an opinion on the following questions:

1. "In arriving at a bona fide cost to wholesalers of alcoholic liquors, should such costs of freight be computed on the cheapest rate allowed by common carriers?"
2. "If answer to No. 1 is negative, what would determine the cost of freight in instances where the wholesaler used his own transportation facilities and/or leased transportation facilities?"

In answer to your questions, it is our opinion that:

1. No.
2. See analysis.

The section to which you refer is § 46-9-11, N.M.S.A., 1953 Compilation, which reads, in germane part, as follows:

"(5) . . . (a) The purchase-price of the spirituous liquors **delivered** to the town in which the wholesaler's wholesale house . . . is located when the invoice is dated not more than sixty (60) days prior to the sale . . . or (b) the replacement cost of such spirituous liquors **delivered** to the town in which the wholesaler's wholesale house . . . is located in the quantity last purchased by such wholesaler, . . ." (Emphasis supplied)

It should be noted that the above section sets the cost to the wholesaler delivered to his warehouse. It does not require that any or all wholesalers use common carriers to obtain their liquor, nor does it require that they base their cost of transportation on rates set by common carriers.

It should further be noted that the statutes specifically permit a licensed wholesaler to transport his own purchases in his own facilities, as found in § 46-10-7, N.M.S.A., 1953 Compilation.

It is, therefore, our view that the cost of freight, in determining cost to the wholesaler, should be the actual cost to each wholesaler notwithstanding the manner in which the liquor is transported. In this connection, however, it should be pointed out that any

licensed wholesaler must obtain a permit under the provisions of § 46-10-8, N.M.S.A., 1953 Compilation (P.S.), if he desires to transport liquor other than by common carrier.

In answer to your second question, if a wholesaler owns or leases his own transportation facilities, he would have to allocate his actual transportation costs, both direct and indirect, so as to arrive at a cost of transportation figure to meet the requirements of the above quoted section. Such allocation is the job of an accountant and certainly would not be attempted by this office even if specific information were available to us.

Boston E. Witt

Assistant Attorney General