

## Opinion No. 59-24

March 9, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** Mr. Dan Sosa, Jr. District Attorney Third Judicial District County Court House Las Cruces, New Mexico

A liquor licensee would not be criminally liable for acts of agent or employee committed contrary to express instructions.

### OPINION

{\*35} This is written in reply to your recent request for an opinion on the following question:

"Can the owner of a bar or saloon be held liable for sale of liquor to a minor when the sale was made by an employee of the owner and against the express instruction of the owner not to sell except in accordance with the law?"

It is my opinion that the owner of a bar may not be held criminally liable for the acts of his employees or agents committed contrary to express instructions of the licensee.

The liquor code, provides that certain acts shall constitute criminal offenses. These offenses include: selling or dispensing to minors (46-10-12).

The penalty applicable to violation of this prohibition is set out in Section 46-10-19, N.M.S.A., 1953 Compilation, which specifically provides that:

"The violation of any provision of this act or of any valid rule or regulation promulgated under the provisions of this act which is not herein declared to be a felony, shall be a misdemeanor, and upon conviction thereof, any person shall be punished by a fine of not more than three hundred dollars or by confinement in jail not more than seven months or by both such fine and imprisonment; Provided that if a corporation be convicted of such a violation it shall be punished by a fine of not more than one thousand dollars."

A licensee may be held criminally liable along with his employee for acts of the employee when the employer either consented to or had knowledge of the intended illegal conduct. **Hipp v. State**, (Ind.) 5 Black 149. On the other hand, it has been accepted as the rule that an employer is not criminally liable for an unlawful sale of intoxicating liquor by his employee where such sale is made in violation of the instructions of the employer. **Commonwealth v. Joslin**, 158 Mass. 482, 33 N.E. 653.

In view of the fact that a presumption of intent is not incorporated in the liquor code, it is my opinion that a licensee may not be found guilty of a crime where an illegal act was committed by an employee, against express instructions, and committed without the knowledge or consent of the licensee.

Hilton A. Dickson, Jr.

Assistant Attorney General