Opinion No. 59-58

June 5, 1959

BY: FRANK B. ZINN, Attorney General

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

It is the legislative intent that new or additional liquor licenses shall not be approved for one and one-half mile zones measured from the exterior boundaries of installations or reservations where military personnel are stationed or training.

OPINION

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

"1. Was the Legislative intent at the time of adoption of 46-5-27 to prohibit the establishment of any liquor license within one and one-half miles of the exterior boundary of an Army Post or was it intended to prohibit the location within one and one-half miles of any dwelling or domicile of military troops?

2. Is such an establishment as the McGregor Firing Range considered a 'U. S. Army Post' within the meaning of the Statute adopted by the Legislature in 1941?

3. Would troops who are bivouaced in the area for short periods of time be considered as 'domiciled' within the meaning of the Statute and Legislative intent?"

*{*89}* It is my opinion, in answer to your first question, that it was the intent of the legislature that no new or additional liquor licenses were to be approved for areas extending one and one-half miles from the exterior boundary of a military installation or reservation where federal troops are stationed.

It is my further opinion that McGregor Firing Range is a military reservation which must be considered a U. S. Army Post within the meaning of the 1941 statute (Chapter 4, Section 1, Laws 1941).

In reply to your third and final question, it is my opinion that troops bivouaced or camped for any period of time in an area which is continuously operated for training purposes are to be considered as "domiciled" within the meaning of the 1941 law.

The stated questions arise in connection with a proposed liquor license in the community of Newman, located in the extreme southern part of Otero County.

From the facts stated in your letter and also revealed by copies of correspondence received from the public information office, U. S. Army Air Defense Center, Fort Bliss, Texas, it is shown that the proposed site of the licensed premises would be some seven hundred feet from the exterior boundary of McGregor Firing Range and approximately nine miles from ". . . a permanent-type Range Camp . . . which is occupied on a rotating basis, but without cessation by military personnel . . .".

The law questioned in your letter is compiled as Section 46-5-27, N.M.S.A., 1953 Compilation, and provides:

"Except as to existing licenses and renewals thereof, the chief of division of liquor control of the New Mexico Bureau of Revenue shall henceforth 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 (1 1/2) miles in any direction measured from the exterior boundaries of any United States army post where United States military troops are domiciled."

The intent of the legislature is clear from the language used in the statute, e.g., "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."

Nothing in the statute suggests that the restricted area be measured from any cantonment, bivouac or camp area, and certainly there is no basis for construing the language of the statute to mean buildings, barracks, tents or implacements.

In **Caldwell's Case,** 19 Wall. 268, 22 L. Ed. 114, a military post was defined as a military establishment when a body of troops is permanently fixed. The facts of the instant situation, as earlier stated, show that there is a permanent range camp which is occupied without cessation.

I do not overlook the fact that there is a continual cycling of trainees through the range camp and that the period of training of each cycle is comparatively short. This fact does not, however, change the permanent nature of the camp itself.

In **U.S. v. Tichenor,** 12 F. 415, it is pointed out that a "military reservation" is a post, camp, arsenal, magazine or fort, depending upon intended and actual use made thereof. Also a military post has been defined to be synonymous with a military station. **U.S. v. Phisterer,** 94 U.S. 219, 24 L. Ed. 116; **Hines v. Mikell,** (C.A.A.) 259 F. 28.

In light of the fact that no real distinction or line of demarcation can be pointed out between the range and the camp, it must be concluded that McGregor Range is an Army Post.

*{*90}* It should further be pointed out that Attorney General's Opinion No. 4627, dated December 21, 1944, in keeping with authority cited at 96 A.L.R. 775, concluded that the

boundary limits of a military post must be looked to in determining the zone of prohibited sales of alcoholic beverages.

The meaning of the word "domiciled" as used in the stated statute must be determined by considering the term with reference to status of persons stationed at an "Army Post".

First, as a matter of military regulation, need, and training facilities, military troops or personnel are continually being transferred from one post to another. The fact of post, camp or station assignment does not per se establish or determine a person's domicile. There must, by our Court's opinion, be a concurrence of the fact and an intent, **Allen v. Allen,** 52 N.M. 174, 194 P. 2d 270. Mere assignment to a military post is not domiciliary, **Pendleton v. Pendleton,** 109 Kan. 600, 201 P. 62.

Accordingly, it must be concluded that the term "domiciled", as used in the statute, refers to the assigned or stationed status of the personnel on the post. And further, it is my opinion that troops who are bivouaced on the range are domiciled thereon regardless of the length of their stay.

In keeping with what has been said, it must be concluded as my opinion that the legislation intended that the outermost reaches of a military reservation where troops are stationed must be looked to in determining and fixing the one and one-half mile area restricted from selling of intoxicating beverages.

Finally, it must be called to your attention that by Chapter 317, Session Laws 1959, the 1941 law, which has been considered in this opinion, was amended to provide as follows:

"Except as to existing licenses and renewals thereof, the chief of division shall henceforth 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 the **United States military installation** where United States military troops are domiciled; provided, however, such licenses may be issued or transferred subject to the discretion of the chief of division, for operation in any area within the one and one-half mile limitation and which portion of the area lies within the incorporated limits of any municipality, but no license shall be issued or transferred for a location within two hundred yards of any entrance to such military installation." (Emphasis supplied)

By this enactment, we find the legislature clarifying the areas herein considered by using the terms "military installation" in place of "army post". This eliminates and will make moot the requested construction of the phrase "United States Army Post."

By Hilton A. Dickson, Jr.

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