

Opinion No. 62-110

August 27, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Albert I. Cornell, Attorney for Bureau of Revenue, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. If a person uses a warehouse in New Mexico solely for the purpose of storing liquor, all of which is to be transported out of the State, must such person be licensed by the Division of Liquor Control?
2. What type of license must be obtained?
3. Are his sales subject to the payment of the Emergency School Tax Act?

CONCLUSIONS

1. Yes.
2. Wholesaler's license.
3. See analysis.

OPINION

ANALYSIS

Our understanding of the facts prompting your inquiry is that an individual owns a United States Customs bonded warehouse in Sunland Park, New Mexico. This individual plans to store imported liquors in the warehouse pending their export out of the State. No sales will be made to New Mexico wholesalers nor will sales be made to anyone else for consumption in New Mexico.

You ask whether the person conducting this operation must obtain a license from the Division of Liquor Control, and, if so, what kind.

After considering the Liquor Control Act carefully, it is our opinion that the legislative intent was to regulate, by license or permit, every person, firm, or corporation dealing

with liquor in New Mexico. Even the common carriers shipping liquor into the State must have a permit. Section 46-10-8, N.M.S.A., 1953 Compilation.

We see the requirement of a license running through all the statutes. Section 46-5-21 (a), N.M.S.A., 1953 Compilation (PS) provides that "Before any person, except licensed New Mexico wholesalers, shall directly or indirectly, sell, offer for sale, **or ship into the State**, any alcoholic liquors, he shall procure from the division a nonresident license and shall pay therefor annually in advance the sum of two hundred fifty dollars (\$ 250)." (Emphasis added)

Section 46-10-1, N.M.S.A., 1953 Compilation, makes it unlawful for anyone who is not licensed to possess alcoholic liquors for the purpose of sale. It is to be noted that this Section does not say "for sale in New Mexico." It simply says for the purpose of sale.

Section 46-10-7, N.M.S.A., 1953 Compilation, makes it unlawful for any person except licensed New Mexico wholesalers or rectifiers to ship any alcoholic liquors into the State of New Mexico unless the person has a non-resident license.

Section 46-10-6, N.M.S.A., 1953 Compilation, provides that nothing in the Act is to be construed to prohibit the storage of alcoholic liquors in a bona fide guardian warehouse (which is what the individual in question has) by **nonresident licensees** and **wholesalers** for usual and ordinary commercial purposes. This certainly indicates to us that unless a person is licensed, he is **not** to store liquor in this State -- whether it is to be sold to New Mexico liquor dealers or not.

The question then becomes: What type of license does a person who simply stores liquor in New Mexico for export have to obtain? Analysis of the various statutes, particularly Section 46-10-6, supra, makes it clear that the necessary license is either a nonresident license (§ 46-5-21, supra) or a wholesaler's license (§ 46-5-4, N.M.S.A., 1953 Compilation).

Wholesaler is defined in Section 46-1-1, supra, as "any person whose place of business is located in the State of New Mexico and who sells, offers for sale, or possesses for the purpose of sale, any alcoholic liquor for resale by the purchaser of the same." The person in question does possess liquor for the purpose of sale, albeit not for the purpose of sale to New Mexico dealers. And those who buy from him are apparently purchasing with the purpose of resale.

Section 46-5-4, N.M.S.A., 1953 Compilation provides that "nothing contained in this section shall prevent the sale, transportation or shipment by a **wholesaler** to any person outside the state of New Mexico when shipped under permit from the division." (Emphasis added)

We do feel that the nonresident license is applicable to the operation in question. Such a license permits a person to "sell, offer for sale or ship into the state alcoholic liquors only to licensed New Mexico distillers, brewers, rectifiers, winers and wholesalers."

Section 46-5-21, supra. The individual here involved does not propose to engage in any of the activities covered by Section 46-5-21, supra.

It is our view that the person in question does have a place of business in New Mexico and, accordingly, must obtain a wholesaler's license.

We are unable to answer your question relative to school tax because the accompanying letter does not describe how the purchase and sale of the liquor is handled. That is, we do not know whether the purchase or sale takes place within the State of New Mexico or elsewhere.