

Opinion No. 62-21

January 29, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Mr. George Franklin, Director, Liquor Control Division, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

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May a minor, accompanied by his parents, bring alcoholic liquor, beer or wine into the state from Mexico?

CONCLUSION

No.

OPINION

ANALYSIS

Section 46-10-12, N.M.S.A., 1953 Compilation, provides in part:

"(a) It shall be a violation of this act for . . . any other person, except the parent or guardian or spouse of any minor, or adult person into whose custody any court has committed such minor for the time, outside of the actual, visible personal presence of such minor's parent, guardian, spouse or the adult person into whose custody any court has committed such minor for the time, to do any of the following acts:

1. To sell, serve or give any alcoholic liquor to a minor.
2. To buy alcoholic liquor for, or to procure the sale or service of liquor to, a minor.
3. To deliver alcoholic liquor to a minor.
4. To aid or assist a minor to buy, procure or be served with alcoholic liquor.

Our Court, in **State v. Cummings**, 63 N.M. 337, 319 P. 2d 946, after citing the above prohibited acts, concluded:

"We agree with this theory and feel that our law clearly forbids any delivery of intoxicants to a minor unaccompanied by his parents, or person 'in loco parentis'."

Section 46-10-9 (D), as of 1959 read:

"Any individual may transport into or out of the state any reasonable amounts of alcoholic liquor, beer, or wine for the exclusive purpose of his private use or consumption, and nothing in this act shall apply to or limit such private actions."

The Legislature, in 1961, added the significant words "not a minor" after the words "Any individual" in this section.

Clearly, from 1959 until amended in 1961, the law allowed a minor to cross our border where he might legally purchase alcoholic beverages and re-enter the state with whatever supply he might desire for his own personal consumption, while, at the same time, the sections cited earlier forbade his purchasing such liquors within the state unless his parents were a party to such purchase.

Has the Legislature now announced a public policy of allowing a minor to purchase, receive and consume liquor in the state so long as he is in the company of his parents, but refusing that same minor the privilege of purchasing liquor outside the state and bringing it into the state in the company of his parents? Such an interpretation appears inescapable.

In **George v. Miller & Smith**, 54 N.M. 210, our Court stated one of the fundamental rules of statutory construction thusly:

"In interpreting a statute the intent is to be first sought in the meaning of the words used, and when they are free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the legislature, no other means of interpretation should be resorted to . . ."

We are aware of no rule of public policy or statutory construction which would require us to interpret the words "not a minor" to mean "not a minor unaccompanied by his parents".

Finding no reasonable grounds for otherwise interpreting the plain words of the statute, we conclude that a minor, whether or not accompanied by spouse, guardian or parents, cannot legally bring alcoholic beverages into the State of New Mexico.