

Opinion No. 63-103

August 15, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Howard E. Babcock, Jr. Chief of the Division of Liquor Control Bureau of Revenue
State Capitol Santa Fe, New Mexico

QUESTION

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What hearings must be presided over by a liquor control hearing officer?

CONCLUSION

See Analysis.

OPINION

{*224} **ANALYSIS**

Laws 1963, Chapter 265, Section 2 amended Section 46-6-3, N.M.S.A., 1953
Compilation to read as follows:

"46-6-3. HEARINGS -- LOCATION -- OPEN TO PUBLIC. -- All hearings under the provisions of this act shall be held by a liquor control hearing officer and may be held in any town in the state of New Mexico designated by him; and all such hearings shall be open to the public."

"This act" refers to Chapter 265, and the matters contained therein.

Chapter 265 is concerned only with the procedures for the suspension or revocation of an existing license. It provides for a hearing before a liquor control hearing officer so that both the licensee and the state shall have an impartial third party to judge whether the licensee has violated the liquor laws.

Under Section 46-6-4, N.M.S.A., 1953 Compilation, where the Chief of Division feels that probable cause exists for filing charges against a licensee for the revocation or suspension of a license, the Chief of Division must file a formal charge against the licensee, and issue an order for the licensee to appear and show cause why his license should not be revoked or suspended. A true copy of the order to show cause must be sent to the governor, who appoints a liquor control hearing officer to preside over the hearing of the matters alleged in the charge.

In our opinion, therefore, the liquor control hearing officer presides only at hearings that result from formal charges looking toward the suspension or revocation of an existing license. Other hearings under the liquor laws, such as hearings on whether a new license should be issued in a given locality or whether an existing license should be transferred to a new location, need not be heard by a liquor control hearing officer, but can be heard by the Chief of the Division of Liquor Control.

By: Norman S. Thayer

Assistant Attorney General