

Opinion No. 63-121

September 20, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Howard E. Babcock, Jr., Director Division of Liquor Control Bureau of Revenue
Santa Fe, New Mexico

QUESTION

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(1) Would the operation of a liquor license at a race track on racing days only during the racing season, be considered the "customary days of operation for that type of business" within the meaning of Section 46-6-1 (1963 P.S.)?

(2) Is the rule applicable to race tracks also applicable to seasonal businesses such as ski basins and summer resorts?

CONCLUSIONS

(1) Yes

(2) Yes, but see analysis

OPINION

{*275} **ANALYSIS**

N.M.S.A. 46-6-1 (1963 P. S.) Subsections A and B provide:

A. Any license or renewal thereof hereinafter issued under the provisions of the Liquor Control Act shall be cancelled if the holder thereof fails {*276} to commence operation of the licensed business in a commercial establishment, within one hundred twenty (120) days after the license is issued, **and to continuously operate thereafter, during customary hours and days** of operation for that type of business.

B. If after the one-hundred-twenty-day period specified in subsection A, **the licensee ceases to operate the licensed business during customary hours and days for that type of business**, for more than ten (10) days, he shall immediately notify the chief of division in writing of the cessation. (Emphasis added)

We agree with your letter that the purpose of the legislature in amending Section 46-6-1 was to prevent "hip pocket" licenses and insure that all licensees engage in business. We are also sure that the legislature was cognizant of the fact that there are a great

many seasonal businesses in this State, and that some liquor licensees must operate different hours and days than others merely because of their location, the nature of allied businesses, and other similar circumstances.

The clear wording of the statute indicates that the legislature intended that except in rare instances, liquor licensees should keep the usual hours and on the usual days that bars and package stores are customarily open. See 10 Word and Phrases, Page 736 et seq. Horse races occupy an unusual position in this legislative scheme. Each race track is the only business of its kind in its area. The State Racing Commission sets the number of days on which races may be held. The rules and regulations of the Racing Commission should govern the days on which a liquor licensee on a race track should keep his premises open for business. The hours which the licenses should keep his premises open for business should be governed by the custom of the liquor licensees on the various race tracks of the State.

Your second question presents a more difficult problem. The days and hours when ski basins, summer resorts, and other seasonal resorts may operate are not governed by Statute.

Liquor licenses which are operated in conjunction with ski basins and summer resorts should be open for business on the days and during the hours when ski basins and summer resorts are customarily open in that area. For example, if it is the custom of the majority summer resorts in a certain area to open in April and close in October, then the premises of all the liquor licenses operated in conjunction with summer resorts in that area should be open for business during those months. These are the customary days which a business of that type must be open. The hours which the licenses must be operated should also be determined by the custom of the area.

The same method should be used for determining the days which liquor licenses operating in conjunction with ski basins would have their businesses open for trade.

By: Joel M. Carson

Assistant Attorney General