

Opinion No. 65-129

July 12, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Joel M. Carson, Assistant Attorney General

TO: William J. Bingham, Assistant District Attorney, Second Judicial District, Albuquerque, New Mexico

QUESTION

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1. May a Liquor License which is located within the five-mile zone be transferred to another location within the five-mile zone?
2. Do the City Officials or the County Officials have jurisdiction over the transfer?

CONCLUSIONS

1. Yes.
2. County Officials.

OPINION

{*218} ANALYSIS

N.M.S.A. 46-5-24 (a & b) provide:

The maximum number of licenses to be issued under the provisions of Section 46-5-2, 46-5-3, and 46-5-11 N.M.S.A., 1953 Compilation shall be as follows:

(a) In incorporated municipalities, not more than (1) dispenser's or one (1) retailer's or one (1) club license for each two thousand (2,000) or major fraction thereof population in each municipality.

(b) In unincorporated areas, not more than one (1) dispenser's or one (1) retailer's or one (1) club license for each two thousand (2,000) or major fraction thereof population in any county excluding the population of incorporated municipalities within the county, provided no new or additional license shall be issued in unincorporated areas or transfers approved for locations or premises situate within five (5) miles of the corporate limits of any municipality, **except that transfer of a license already within the five (5) mile zone may be made: (1) to another location within the zone; and (2) from the municipality to a location within the zone.** (Emphasis supplied.)

Opinion of the Attorney General No. 58-137 passed upon this same question and in so doing it was said:

Licenses presently located in county areas and lying more than five (5) miles from the incorporation limits of any city, town or village may be moved to any other location in said area, but not to locations situated within the so-called five (5) mile zone. **Licenses located within the "five mile" zone may be moved to other locations within said zone.** Licenses located {**219*} within the "five mile" zone may also be moved to locations lying within the adjacent city, town or village limits. (Emphasis supplied.)

We believe that the clear language of the statute permits a transfer from a point within the five-mile zone to another point within the five-mile zone and we therefore, without hesitancy, affirm our position in the above-mentioned opinion.

The answer to your second question is also contained in Opinion of the Attorney General No. 58-137. In that opinion we said that municipal authorities may pass only upon transfers of licenses within the municipal limits and from points within the five-mile zone into the municipality. The municipality has no authority, unless it is expressly granted by statute, to rule on transfers outside the municipal limits. We find no authority which would grant them this power. It is therefore our opinion that the county has the power and the duty of either approving or disapproving a transfer from a point within the five-mile zone to a point within the five-mile zone.