

## Opinion No. 65-215

October 29, 1965

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

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

### QUESTION

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Is a person who has been convicted of two separate misdemeanor violations of Article 5 of Chapter 46 of the New Mexico Statutes, 1953 Compilation, in a 12 month period, but not in a calendar year, prohibited from receiving a license by Section 46-5-14 (a)(1), N.M.S.A.?

#### CONCLUSION

No.

### OPINION

#### {\*351} ANALYSIS

Section 14(a)(1) of Article 5 of Chapter 46 of the New Mexico Statutes, 1953 Compilation, provides:

The following classes of persons shall be prohibited from receiving licenses under the provisions of this act:

(1) Persons who have been convicted of two (2) separate misdemeanor violations of this act in any calendar year or of any felony, except those persons restored to civil rights.

The term "calendar year" appearing in Section 46-5-14(a)(1) is clear and not susceptible to being interpreted broadly as meaning {\*352} any 12 month period. A "calendar year" by its plain meaning can only be from January 1st through December 31st. Attorney General Opinion No. 4680, (March 13, 1945) stated with respect to Section 14(a)(1):

One violation by an agent or employee of the licensee, might constitute a violation by the licensee, but unless the licensee himself has been convicted twice in a calendar year of misdemeanor violations of the Liquor Act, the licensee would not be prohibited under this section from receiving a renewal license.

It is also clear both from the language of Section 46-5-15(a)(1) and the foregoing opinion thereon that two convictions, and not merely one conviction and a subsequent arrest on another charge, must occur in the same calendar year in order for the prohibition of Section 14(a)(1) to become operative.

Accordingly, two separate misdemeanor convictions must occur in a single calendar year before Section 14(a)(1) prohibits a person from receiving a license.