

Opinion No. 67-124

October 30, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Lawrence H. Prentice Administrative Assistant to Governor David F. Cargo
Santa Fe, New Mexico

QUESTION

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May a liquor license be transferred from one county to another within the State?

CONCLUSION

No.

OPINION

{*190} **ANALYSIS**

We assume that the liquor license mentioned in the question above is either a dispenser's license or a retailer's license. Since the applicable statutory sections for both licenses are almost identical, we need only discuss the law applicable to one of these licenses to arrive at our conclusion. We have chosen to discuss the law applicable to a retailer's license.

Since we can find no specific authority dispositive of the question asked, we must resort to statutory construction. It is a cardinal rule of statutory construction that in order to ascertain the intention of the legislature the whole act must be considered and not any one particular provision. It will be seen that by looking at all of the laws relevant to the issuance and transfer of liquor licenses, that the legislature did not intend to allow these licenses to be transferred from one county to another.

First of all Section 46-5-3, N.M.S.A., 1953 Compilation provides that a retailer's license shall be issued in "any local option district" to any person found qualified under the provisions of our liquor licensing act. A "local option district" is a county in the state or any city containing a population over 5000 whose voters have approved of the sale of alcoholic beverages in the county or city. Thus we see that a license appears to be local in nature.

Section 46-4-8, N.M.S.A., 1953 Compilation requires that the chief of the division of Liquor Control seek the permission of the governing body of the local option district prior to the issuance or transfer of a retailer's license. If the governing body disapproves of

the issuance of a new license or transfer of an existing license, the chief of the division of Liquor Control is prohibited from issuing or transferring the license. This further indicates the local nature of the license. More important is the fact that there is nothing in this section to indicate that a license may be transferred from one county to another. Extension of the language of a statute to cover something not covered therein should not be made by statutory construction. Since there is no specific authority to transfer a license from one local option district to another, we must assume that there is no power to do so. This conclusion is strongly reinforced by Section 46-5-24, N.M.S.A., 1953 Compilation which provides for a maximum number of licenses in counties and municipalities.

Section 46-5-24, supra, sets forth the limitations on the number of licenses that can be issued as follows:

"The maximum number of licenses to be issued under the provisions of sections 46-5-2, 46-5-3 and 46-5-11 New Mexico Statutes Annotated, 1953 Compilation, shall be as follows:

(a) In incorporated municipalities, not more than one (1) dispenser's or one (1) retailer's or one (1) club license *{*191}* for each two thousand (2,000) or major fraction thereof population in such 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.

(c) In rural areas new or additional licenses may be issued regardless of population of the proposed location or premises are not within ten (10) miles of any existing licensed premises, Provided that such new or additional license and any renewal thereof, issued in such rural areas, either before or after the effective date of Laws of 1957, chapter 159, section 1 (this section) shall not be transferred to any other location or premises within ten (10) miles of another licensed premises."

This section of the New Mexico statutes is applicable only to the issuance of new licenses and not to the transfer of existing licenses. Thus, if a license could be transferred from one county to another, there would be no restriction on the number of licenses that could be transferred into a county, and therefore no effective limitation. The legislative intent of limiting the number of licenses that can be issued in any one

municipality or county would be thwarted. From this fact and the foregoing discussion of the issuance of licenses, it must be concluded that the director of the division of Liquor Control has no power to authorize the transfer of a retailer's or dispenser's license from one county to another.

By: Gary O'Dowd

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