

Opinion No. 70-56

June 23, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: The Honorable Turner W. Branch New Mexico State Representative 4308 Avenida La Resolana, N.E. Albuquerque, New Mexico

QUESTIONS

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May a New Mexico liquor dispenser's license be transferred from one municipality to another provided that both municipalities comply with the one license per two thousand population requirement?

CONCLUSION

No.

OPINION

{*94} ANALYSIS

We find no authority directly stating the solution to this question. However, we have several statutes, Attorney General Opinions, and rules of statutory construction which conclusively support the answer we have reached.

Section 46-5-24, N.M.S.A., 1953 Compilation sets out the relevant limitations on the issuance and transfer of New Mexico liquor dispenser's licenses 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 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 if 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."

It is a basic rule of statutory construction that the language of a statute should not be extended to cover something not covered therein, **State v. Prince**, 52 N.M. 15, 189 P.2d 993 (1948). This rule by itself casts doubt upon the proposed transfer as provisions exist for other transfers but not for the inter-municipal one suggested.

The statutory language:

"(b) . . . Provided that no new or additional licenses shall be issued . . . or transfers approved for locations . . . within five [5] miles of the corporate limits . . ."

has been interpreted in Attorney General Opinions No. 58-137, issued June 29, 1958, No. 59-137, issued September 10, 1959, and No. 62-144, issued December 7, 1962, to refer to transfers **to** a location within the five-mile zone and not to transfers from the five-mile zone. The statute authorizes only two types of such transfers and thereby excludes all others. The effect of this is that the Director of the Department of Alcoholic Beverage Control does not have the authority to approve the proposed transfer. A similar result is seen in Attorney General Opinion No. 59-137, supra, which ruled that a liquor license cannot be transferred from a location outside the five-mile zone to a location within such five-mile zone.

The limitations as to the number of licenses per population, that are expressed in this statute, apply only to the issuance of new licenses and not to the transfer of existing licenses. Thus, a transfer from one municipality to another would be without restriction in this regard. This would result in thwarting the legislative intent of limiting {*95} the number of licenses that can be issued to any one municipality.

These combined points indicate conclusively that a dispenser's license may not be transferred from one municipality to another.

By: Gary O'Dowd

Deputy Attorney General