

Opinion No. 71-01

January 4, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Carlos Jaramillo, Director Alcoholic Beverage Control Department Santa Fe, New Mexico

QUESTIONS

QUESTION

What action may or must the Director of the Alcoholic Beverage Control Department take in regard to liquor dispenser's licenses numbered 1708 and 1709 in Clovis, New Mexico based on the facts set forth below?

FACTS

On November 12, 1970, the Clovis City Commission received notice from the Director of the Alcoholic Beverage Control Department of applications for the two subject licenses. The City Commission caused the proper notice of such applications to be published in the Clovis News Journal twice -- on December 3, 1970 and December 10, 1970. The City Commission disapproved issuance of the subject licenses on December 22, 1970. Notwithstanding the disapproval by the Clovis City Commission, the then Director of the Alcoholic Beverage Control Division issued the subject licenses.

CONCLUSION

The subject licenses must be recalled.

OPINION

{*2} ANALYSIS

It must be noted at the outset that Section 46-2-11, NMSA, 1953 Compilation (P.S.) provides that it is the duty of the Director of the Alcoholic Beverage Control Department "to administer and enforce the laws with which the department is charged."

Section 46-4-8, NMSA, 1953 Compilation provides that if proper notice is given to the Director of the Alcoholic Beverage Control Department of disapproval of a liquor license application, the Director "shall not issue the license." Proper notice of disapproval was duly made to the Director by the city's governing authority.

The publication requirements called for in the same section are that "the notice shall be published in the newspaper at least two times within the period of fifteen days

immediate following the receipt of the governing body of the notice from the chief of the liquor control division."

In the case at hand, the application notice was received by the City from the Director on November 12, 1970; the publication by the City Commission of Clovis was on December 3 and 10 of 1970. The Commission meeting at which the disapproval action was taken was on December 22, 1970. Thus publication of the notice was in excess of fifteen days from receipt of notice from the Director that the applications had been received. Considering the purpose of the notice publication, i.e., to make the citizenry aware that a liquor license application has been made and will be considered by the governing body, there was substantial compliance with the statute. That the publication served the statutory purpose is clear from the following statement in each of the two letters to the then Director, dated December 23, 1970 from the Mayor of the City of Clovis.

"There were numerous protests filed by local residents opposing the approval of the license sought by these applicants."

We feel sure that the legislature never intended that the Director could subvert its clearly expressed dictate that a liquor license shall not be issued when the local governing body has disapproved the application; simply because publication of the notice was made more than fifteen days after receipt of notice of the application from the Director. The publication served its purpose. Local residents were duly informed by publication that the license {*3} applications had been submitted to the Director. To ascribe a magical quality to the fifteen day provision when appropriate notice to the residents had been published, and thereby allow the Director of the Alcoholic Beverage Control Department to overrule a disapproval by the local governing authority, would negate an express mandate enacted by the New Mexico Legislature. Quite clearly such a result is neither desirable nor permissible.

The action by the Director in issuing the licenses in question in spite of the City's disapproval, was void and invalid at its inception. It was directly in conflict with the public policy as clearly pronounced by our Legislature and must be rectified. This can only be accomplished by recalling the improperly issued licenses.

By: Oliver E. Payne

Deputy Attorney General

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