

## **Opinion No. 71-116**

November 17, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Carlos Jaramillo Director Department of Alcoholic Beverage Control Lamy Building  
Santa Fe, N.M. 87501

### **QUESTIONS**

#### QUESTIONS

1. Would the City of Albuquerque have constituted the local option district for purposes of the recent Sunday Sales referendum if a majority of its residents voted in favor of the sale of alcoholic liquor in the 1933 local option election in Bernalillo County?
2. If a majority of the voters in the recent local option election on Sunday sales in Dona Ana County, including the voters of the City of Las Cruces, voted in favor of the sale of alcoholic liquor on Sunday within the limits of the county, may alcoholic liquor be sold on Sunday within the limits of Dona Ana County?
3. If a majority of the voters in the recent local option elections in San Miguel County, including the voters of the City of Las Vegas, voted in favor of the sale of alcoholic liquor on Sunday within the limits of the county, may alcoholic liquor be sold on Sunday within the limits of San Miguel County?
4. If a majority of the voters in the recent local option election in Otero County, including the voters of the City of Alamogordo, voted against the sale of alcoholic liquor on Sunday within the limits of the county, but a majority of the residents of Alamogordo voted in favor of the sale of alcoholic liquor on Sunday, may alcoholic liquor be sold on Sunday within the limits of Alamogordo?
5. If a majority of the voters in the local option election in Los Alamos County voted in favor of the sale of alcoholic liquor on Sunday within the limits of the county, may alcoholic liquor be sold on Sunday within the limits of the municipality of Los Alamos County?

#### CONCLUSIONS

1. See analysis.
2. Yes.
3. Yes.

4. Yes.

5. Yes.

## OPINION

### {\*174} ANALYSIS

The legislature has defined "local option district" in Section 46-1-1(J), N.M.S.A., 1953 Comp. (1971 Supp.):

"J. 'local option district' means any county or city of over five thousand [5,000] population, according to the latest United States census which shall, under the terms of Chapter 46 N.M.S.A., 1953, have voted in favor of the sale of alcoholic liquors within the limits of that county or city, or which shall have voted in favor of the sale of alcoholic liquors within the limits of that county or city under the terms of Chapter 159 of the Laws of 1933, or Chapter 112 of the 1935 Laws."

Accordingly, in order for a city to constitute a separate local option district it is essential that the city have a population in excess of five thousand residents and that the city have voted in favor of the sale of alcoholic liquors within its distinct limits pursuant to the provisions of either Chapter 159, N.M. Laws 1933, or Chapter 112, N.M. Laws of 1935, or Chapter 46, N.M.S.A., 1953 Comp. In order to satisfy this latter requirement, the city must have previously held its own local option election on the question of the sale of alcoholic liquors within the limits of that city, or the city, in a previous local option election on the question of the sale of alcoholic liquors within the limits of the county in which the city is situated, must have satisfied the conditions of Chapter 159, Section 3(g), N.M. Laws 1933 or Chapter 112, Sections 301 (g), N.M. Laws 1935 or Section 46-3-1(g), N.M.S.A., 1953 Comp. These several statutory provisions are substantially identical. For example, Chapter 159, Section 3(g), N.M. Laws 1933 recites in relevant part:

". . . If the majority of voters in said county, including the votes of said city, shall vote **against** the sale of alcoholic liquors in said county, said county shall thereby have failed to adopt the local option provisions of this act, but if the majority of votes in said city shall be in favor of the sale of alcoholic liquor, said city shall have adopted the local option provisions of this act . . ." (Emphasis added)

Consequently, whether the City of Albuquerque and the County of Bernalillo were separate local option districts for the purposes of the recent referendum on the question of Sunday liquor sales depends on the electoral history of these governmental subdivisions with respect to the approval of the sale of alcoholic liquors within their respective geographical limits.

This office is informed that in 1933, pursuant to the provisions of Chapter 159, N.M. Laws 1933, a local option election was held in the County of Bernalillo to determine

whether the sale of alcoholic liquors within the limits of that county would be legalized. A majority of the votes cast in the county wide referendum, which included the votes of the residents of the City of Albuquerque, were in favor of the sale of alcoholic liquors within the limits of the County of Bernalillo. Since the majority of the voters in the 1933 Bernalillo County local option election, including the voters of the City of Albuquerque, voted in favor of the sale of alcoholic liquor within Bernalillo County, the provisions recited in Chapter 159, Section 3(g), N.M. Laws 1933 were simply not invoked. Accordingly, if the City of Albuquerque has not held a separate referendum to determine whether the sale of alcoholic liquors should be permitted within its distinct limits, the City of Albuquerque failed to qualify as a "local option district" for purposes of the recent referendum on Sunday sales because it {*\*175*} is not a city which ". . . shall . . . have voted in favor of the sale of alcoholic liquors within the limits of that . . . city . . ." On the other hand, the County of Bernalillo, including the City of Albuquerque, constituted a local option district, as defined in Section 46-1-1, **supra**, by virtue of the 1933 county referendum.

The City of Las Cruces likewise did not constitute a local option district for purposes of the recent Sunday sales referendum. This office is informed that in 1933 Dona Ana County, including the City of Las Cruces, voted in favor of the sale of alcoholic liquors within the limits of Dona Ana County. Since a majority of the voters in the 1933 Dona Ana County local option referendum, including the voters of the City of Las Cruces, voted in favor of the sale of alcoholic liquors within Dona Ana County, the City of Las Cruces failed to satisfy the conditions recited in Chapter 159, Section 3(g), N.M. Laws 1933. Assuming that the City of Las Cruces has not subsequently held a separate election on the question, it is not a city which ". . . shall . . . have voted in favor of the sale of alcoholic liquors within the limits of that . . . city . . ." and, accordingly, was not a local option district for purposes of the recent referendum on Sunday sales. On the other hand, Dona Ana County, including the City of Las Cruces, constituted a local option district for purposes of the recent election by virtue of the 1933 county referendum.

Similarly, the City of Las Vegas was not a local option district for purposes of the recent Sunday sales local option election. This office is informed that in 1933 San Miguel County, including the town of Las Vegas and the City of Las Vegas (now simply the City of Las Vegas), voted in favor of the sale of alcoholic liquors within the limits of the County of San Miguel. Again, since the majority of the voters in the county as a whole voted in favor of the sale of alcoholic liquors within the limits of the county, the recited provisions of Chapter 159, Section 3(g), N.M. Laws 1933 were not invoked. Assuming the City of Las Vegas has not subsequently held a separate local option election on the question of the sale of alcoholic liquors within its distinct limits, it is not a city which ". . . shall . . . have voted in favor of the sale of alcoholic liquors within the limits of that . . . city . . ." and, accordingly, was not a separate local option district for purposes of the recent local option election.

This office is informed that in 1933 and again in 1954 the residents of Otero County, including the residents of the City of Alamogordo, voted in favor of the sale of alcoholic

liquors within the limits of the county and no separate city election on the question has been held. For the reasons previously stated, the City of Alamogordo did not constitute a local option district for the purposes of the recent Sunday sales local option referendum. Nevertheless, the situation in Alamogordo and Otero County is somewhat unique. It appears that the majority of the voters in Otero County outside the City of Alamogordo have rejected the Sunday sales proposition while a majority of the voters of Alamogordo have approved it. Moreover, it appears that a majority of voters of Otero County, including the voters of the City of Alamogordo, have rejected the Sunday sales proposal. As previously noted, Section 46-3-1(g), **supra**, like Chapter 159, Section 3(g), N.M. Laws 1933, provides that if a majority of the voters in the county, including the voters in the city, shall vote against local option, but a majority of the voters in the city shall be in favor of it, the county shall have rejected local option but the city shall have adopted it. Accordingly, since a majority of the voters in Otero County, including the voters in the City of Alamogordo, were against local option Sunday sales, but a majority of the voters of the City of Alamogordo were in favor of it, Otero County has rejected Sunday sales but the City of Alamogordo has adopted it.

Los Alamos County is an incorporated county pursuant to the provisions of the New Mexico Constitution, Article X, Section 5. This unique situation does not create any difficulty with respect to the recent Sunday sales referendum. There are two communities within Los Alamos County, White Rock and Los Alamos, but neither of these communities has any independent governmental status within the incorporated county. Obviously, Los Alamos County was the only conceivable {*\*176*} local option district within the county for purposes of the local option Sunday sales referendum. The favorable vote on the Sunday sales proposal in Los Alamos County served to approve Sunday sales for the entire county including each of its communities.