

Opinion No. 75-46

August 13, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Belarmino Giron, Secretary New Mexico Hospitals and Institutions Department
Lamy Building Santa Fe, New Mexico 87503

QUESTIONS

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If a building which is owned by the Hospitals and Institutions Department at Fort Stanton Hospital and Training School is leased to a group of persons for renovation and use as a community hall, can the lessee-proprietors legally serve alcoholic beverages at social functions in the building?

CONCLUSION

Yes.

OPINION

{*127} ANALYSIS

Section 46-10-11, NMSA, 1953 Comp. provides as follows:

"46-10-11. Drinking in public places -- Selling or serving liquor other than in licensed establishments. -- It shall be unlawful to drink or consume alcoholic liquors, or for any person who is the owner or proprietor to sell, serve, furnish or permit the drinking or consumption of alcoholic liquors in any public dance hall, pool room, bowling alley, street, state or federal building, or in any other public place or any public or private club, key club, or coffee house whether operated for profit or not except establishments having a license to dispense alcoholic liquors. It shall also be unlawful for any licensee to give any kind of "curb service" of alcoholic liquors except in unbroken packages, outside of the building on the premises at which licensee's business is operated except to customer's seated at tables."

A statute is subject to construction and interpretation only when its meaning is not clear. If language in a statute is clear and unambiguous, the statute must be given its literal meaning. **Weiser v. Albuquerque Oil and Gasoline Company**, 64 N.M. 137, 325 P.2d 720 (1958). We believe this statute to be clear and unambiguous; it allows the lessee-proprietors of your state building to sell, serve, furnish and permit the drinking and consumption of alcoholic liquors in that building if a liquor license is properly obtained or used.

Opinion of the Attorney General No. 68-72, issued July 10, 1968, applied the last antecedent doctrine in construing this section to prohibit issuance of a liquor license to be used in a state building owned by the University of New Mexico. The last antecedent doctrine means that a phrase following a list of items modifies only the item immediately preceding the phrase. Opinion 68-72, **supra**, held that the phrase "except establishments having a license to dispense {*128} alcoholic liquors" modified only the words "any public or private club, key club or coffee house whether operating for profit or not." We overrule that opinion because it contravenes the legislative intent of the section. The phrase "or any public or private club, key club, or coffee house whether operated for profit or not" was added to the list of locations preceding it by Laws 1971, Chapter 251, § 1. Prior to this amendment the section read "In any other public place except establishments having a license to dispense alcoholic liquors." Had the legislature intended the last antecedent doctrine to apply in this section, the phrase "except establishments having a license to dispense alcoholic liquors" would have remained in the same place it was located prior to the 1961 amendment without being added to the item "or public or private club, key club or coffee house whether operated for profit or not." It should also be noted that Laws 1955, Chapter 112, § 1 inserted the following language, which was later repealed, into the section:

"Provided, further, that in any county where the sale of alcoholic liquor is otherwise prohibited by law it shall be unlawful for any person who is the owner or proprietor to sell, serve, furnish or permit the drinking or consumption of alcoholic liquors in any club operated for profit or in any public dance hall, pool room, bowling alley, street, state or federal building, or in any other public place.

This language carries the obvious implication that the selling, serving, furnishing or drinking of alcoholic beverages in any of the itemized locations within counties where the sale of alcoholic liquor is allowed would be legal.

It is our opinion that the serving of alcoholic liquors by the lessee-proprietor of your state building is legal under this section if the other provisions of the Liquor Control Act, including licensing, are complied with.

By: F. Scott MacGillivray

Assistant Attorney General