

## Opinion No. 75-41

July 30, 1975

**BY:** OPINION OF TONEY ANAYA, Attorney General

**TO:** Carlos L. Jaramillo, Director Department of Alcoholic Beverage Control  
Wallace Building Santa Fe, New Mexico 87503

### QUESTIONS

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May the Director of the Department of Alcoholic Beverage Control legally issue a liquor license to the City of Albuquerque under Section 46-5-28, NMSA 1953 Comp. (1973 P.S.) without regard to the quota limitation imposed under Section 46-5-24(a), **supra**?

#### CONCLUSION

No.

### OPINION

#### {\*116} ANALYSIS

Section 46-5-28, NMSA, 1953 Comp. (1973 P.S.) provides as follows:

"LOCATIONS ON MUNICIPAL PROPERTY. -- The chief of the division of liquor control may issue or transfer licenses for the sale of alcoholic liquor for use at locations on property owned or under the control of any municipality **if**:

A. the property is leased by the municipality for a commercial purpose; and

B. the governing body of the municipality has approved the issuance or transfer of the license for use at the location on municipal property."

Section 46-5-24(a) provides as follows:

"LIMITATION ON NUMBER OF LICENSES THAT CAN BE ISSUED. -- 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."

Your question calls for a construction of the word "licenses" used in Section 46-5-28, **supra**, and specifically whether a new type of municipal license is created under that section different from a dispenser's, {*\*117*} retailer's or club license referred to in Section 46-5-24(a), **supra**.

Statutory construction is for the purpose of determining legislative intent, and legislative intent is to be determined primarily from the language used in the statute. **State v. McHorse**, 85 N.M. 753, 517 P. 2d 75 (Ct. App. 1973). If the words used in the statute are plain and unambiguous, there is no necessity for construction. **Southern Union Gas Co. v. New Mexico Pub. Serv. Comm'n**, 82 N.M. 405, 482 P. 2d 913 (1971). The language of Section 46-5-28, **supra**, clearly does not create a new type of liquor license. See Sections 46-5-2, 46-5-3, 46-5-4, 46-5-5, 46-5-10.1 and 46-5-10.2, **supra**. The term "licenses" in that section clearly and unambiguously refers to the other types of liquor licenses created under the Liquor Control Act. Thus, there is no room for statutory construction, and a license may not be granted to the City of Albuquerque without regard to the limitation imposed by Section 46-5-24(a), **supra**.

Conceding for the sake of argument that the term "licenses" in Section 46-5-28, **supra**, is not clear and unambiguous, the same result is reached by statutory construction. The plain language of the act establishes a legislative intent to permit licenses to be used for the sale of alcoholic liquor at locations on certain property owned or controlled by municipalities. Section 46-5-28, **supra**. The title of an act is also an aid to determine legislative intent. **Harriett v. Lusk**, 63 N.M. 383, 320 P.2d 738 (1958). The title of Section 46-5-28, **supra**, Laws 1969, Chapter 206, Section 1 is as follows:

"An act relating to alcoholic liquors, and permitting licenses to be used at locations on certain property owned or controlled by municipalities."

This title establishes the same legislative intent for Section 46-5-28, **supra**, as does its plain language.

Part of the legislative intent behind Section 46-5-24(a), **supra**, may also be arrived at by examining the plain language of the statute and the title of the acts: To limit on a population basis the number of liquor licenses that may be issued in incorporated and unincorporated areas.

Both of these sections deal with the issuance of liquor licenses for the sale of alcoholic liquor. Statutes which relate to the same subject matter are **in pari materia**, and if at all possible by reasonable construction, both are to be so construed that effect is to be given to every provision of each. **State ex rel. State Park and Recreation Comm'n v. New Mexico State Authority**, 76 N.M. 1, 411 P.2d 984 (1966). Construing Sections 46-5-28 and 46-5-24(a) **in pari materia**, the legislative intent behind each section is given effect by construing the term "licenses" under Section 46-5-24, **supra**, to include only the other types of liquor licenses allowed under the Liquor Control Act.

We also note that the New Mexico Supreme Court has held that you have "only such powers as are granted by the legislature." Your "powers are **specifically described and limited.**" (Emphasis added.) **Baca v. Grisolano**, 57 N.M. 176, 185, 256 P.2d 792, 798 (1953); **City of Santa Rosa v. Jaramillo**, 85 N.M. 747, 517 P.2d 69 (1973). You have been given no specific power to grant the City of Albuquerque a license without regard to the limitations imposed by Section 46-5-24(a), **supra**. In view of {*\*118*} these cases and the foregoing analysis, we conclude that Section 46-5-28, **supra**, does not allow the City of Albuquerque to have a liquor license without regard to the limitations in Section 46-5-24(a), **supra**, and that you cannot legally issue such a license.

By: F. Scott MacGillivray

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