

Opinion No. 77-23

July 19, 1977

OPINION OF: Toney Anaya, Attorney General

BY: Albert V. Gonzales, Assistant Attorney General

TO: Mr. David W. Bonem District Attorney Curry County Courthouse Clovis, New Mexico 88101

SELLING OF FIREARMS IN LIQUOR ESTABLISHMENTS-Liquor establishments cannot lawfully advertise or sell firearms in an establishment licensed to sell alcoholic beverages.

QUESTIONS

May a liquor establishment lawfully advertise or sell firearms, in addition to dispensing alcoholic beverages pursuant to Section 40A-7-2.1, NMSA, 1953 Comp., as amended?

CONCLUSIONS

No. See analysis.

ANALYSIS

The statute in question was amended during the 1977 Legislature by Laws 1977, Chapter 160, and now reads, in pertinent part, as follows:

Unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverage consists of carrying a loaded or unloaded firearm on any premises licensed by the department of alcoholic beverage control for the dispensing of alcoholic beverages . . . (Emphasis added).

OPINION

The amendment of Section 40A-7-2.1, NMSA, 1953 Comp. (1975 Supp.) changed the definition of the crime from carrying a firearm "into" any licensed premise to carry a firearm "on" any licensed premise. For the purposes of the question asked, the change is a significant one since the preposition "into" generally expresses entrance or a passage from the outside of a thing to its interior. Black's Law Dictionary 957 (4th Ed. 1968); Humble Pipe Line Co. v. State, 45 N.M. 29, 109 P.2d 247 (1940). Therefore, if a person did not come in with the firearm, but rather acquired the firearm while inside the licensed premises, no crime would have occurred. See Culberson v. State, 119 Ga. 805, 47 S.E. 175 (1904); Modesette v. State, 115 Ga. 582, 41 S.E. 992 (1902). However, the change to "on" would make the crime complete if a person was found in

or upon the licensed premises with a firearm since that is how "on" has been generally defined. Black's Law Dictionary 1240, *supra*; see also *Ludwig v. Massachusetts Mut. Life Ins. Co.*, 524 F.2d 376, 384 (7th Cir. 1975); *Continental Life Ins. Co. v. Wilson*, 36 Ga. App. 840, 1137 S.E. 403 (1927). We must presume this to be the case since the adoption of a statutory amendment is evidence of an intention by the legislature to change the provisions of the original law. *Stang v. Hertz Corp.*, 81 N.M. 69, 463 P.2d 45 (Ct. App. 1969), *aff'd*, 81 N.M. 348, 467 P.2d 14 (1969).

Given this analysis of the amendment, it follows that a liquor establishment could not lawfully sell firearms within a licensed premise since the patron who would purchase a firearm would be in violation of Section 40A-7-2.1, *supra*, as most recently amended. Even though an owner, lessee, tenant, or operator of a licensed premises would be exempted from the provisions of Section 40A-7-2.1, *supra*, his customers are clearly not. Delivering a firearm, whether loaded or unloaded, into the possession of a person within a licensed premises would constitute the aiding and abetting of the crime of "unlawful carrying of a firearm in a licensed liquor establishment" as the crime is now titled, as defined by Section 40A-1-14, NMSA, 1953 Comp. Therefore, the operator of a liquor establishment would be guilty of violating Section 40A-7-2.1, *supra*, as a principal. See *State v. Nance*, 77 N.M. 39, 419 P.2d 242 (1955), *cert. denied*, 386 U.S. 1039 (1967).

It is also apparent that the legislature intended to prohibit the presence of firearms in licensed liquor establishments except for the limited situations where a law enforcement officer is carrying his firearm while in the lawful discharge of his duties, or the owner, operator or employee of a licensed premises is carrying a firearm to protect the premises. These exceptions are in addition to others where the firearm would be in places other than the room or building housing the bar. Section 40A-7-2.1(3) and (4), *supra*. Therefore, the owner, operator or employee could keep whatever firearms are necessary {**149*} to maintain the security of the premises; however, in view of the intent to protect the public safety by keeping firearms out of the hands of potentially intoxicated persons, the owner or operator of a licensed establishment could not keep an arsenal of firearms on the licensed premises. Such a cache of firearms would be more than that necessary to maintain the security of the licensed premises. Therefore, whatever displays of firearms are present in the establishment would have to be removed.

The selling of firearms is prohibited in both a package store where alcoholic beverages are sold in the unbroken package or a bar or lounge where alcoholic beverages are sold by the drink since "an establishment licensed to dispense alcoholic beverages" includes both kinds of establishments. The word "dispense" contemplates both selling by the drink and in the unbroken package. See *State v. Bush*, 93 Idaho 538, 466 P.2d 578 (1970); *Sawyer v. Frank*, 152 Iowa 341, 132 N.W. 861 (1911).

In summary, it is our opinion that the selling of firearms in a licensed liquor establishment would be unlawful pursuant to Section 40A-7-2.1, *supra*, as amended by Laws 1977, Chapter 160. There is nothing in Section 40A-7-2.1, *supra*, which makes it

unlawful to advertise the sale of firearms in a liquor establishment, but since the liquor establishment cannot sell firearms, the advertising of the sale of firearms in the liquor establishment would constitute false advertising and an unfair or deceptive trade practice. Section 49-12-2, NMSA, 1953 Comp. (1975 Supp.) and Section 49-15-2(C), NMSA, 1953 Comp. (1975 Supp.). Of course, this is not intended to mean that the advertising of firearms as a general principle is forbidden in liquor establishments, but that any business establishment could not advertise something that it does not sell since that would be in violation of the statutes cited.

ATTORNEY GENERAL

Toney Anaya, Attorney General