

## Opinion No. 78-11

June 9, 1978

**OPINION OF:** Toney Anaya, Attorney General

**BY:** Albert V. Gonzales, Assistant Attorney General

**TO:** Carlos L. Jaramillo, Director Department of Alcoholic Beverage Control  
Lew Wallace Building Santa Fe, New Mexico 87501

### LIQUOR LICENSE

A person who has been convicted of two separate misdemeanor violations of the Liquor Control Act in any calendar year or of any felony subsequent to receiving a liquor license is disqualified from receiving a renewal of that license.

### QUESTIONS

If a person has been convicted of two separate misdemeanor violations of the Liquor Control Act in any calendar year or of any felony subsequent to receiving a liquor license, is that person disqualified from continuing to hold that license?

### CONCLUSIONS

Yes. See Analysis.

### ANALYSIS

Section 46-5-14, N.M.S.A. 1953 Comp. provides, **inter alia**, that:

"The following classes of persons shall be prohibited from **receiving** licenses under the provisions of this act:

(1) Persons who have been convicted of two [2] separate misdemeanor violations of this act in any calendar year or of any felony, except those persons restored to civil rights."  
(Emphasis added.)

### OPINION

Since the specified classes of persons are prohibited from "receiving" licenses under the Liquor Control Act, the answer to your question lies in the construction of the word "receiving." When a term is not defined by a statute, it is then appropriate to interpret the word in accordance with its ordinary, everyday meaning unless clearly expressed legislative intent requires otherwise. **State v. Hernandez**, 89 N.M. 698, 556 P.2d 1174 (1976); **Mobile America, Inc. v. Sandoval County Comm'n**, 85 N.M. 794, 518 P.2d

774 (1974); **Tafoya v. New Mexico State Police Bd.**, 81 N.M. 710, 472 P.2d 973 (1970). The term "receive" is ordinarily defined as "to come into possession of" or "to take into possession and control." Webster's New Collegiate Dictionary, p. 964 (1976); Black's Law Dictionary 1433 (rev'd 4th Ed. 1968).

Using the ordinary definition of the term "receiving," certain classes of persons would be prohibited from coming into possession of a liquor license under the provisions of the Liquor Control Act. Thus, the disqualification would be made at the point at which the person would come into possession of a license. It is clear under this analysis that a convicted felon, for example, could not receive or come into possession of a new license. However, your question relates to the situation where the person is convicted of a felony after receiving his license.

Section 46-5-1, N.M.S.A. 1953 Comp., in setting forth the policy of New Mexico with respect to the sale of all alcoholic liquors, requires that the Director investigate "the legal qualifications of all applicants for licenses . . . before such license is issued, to the end that licenses **shall not be issued to unqualified or disqualified persons.** . . ." (Emphasis supplied.) Without equivocation, the adjective "unqualified" is to be applied to persons who make their initial application for a license. The adjective "disqualified" is to be applied to those who make application for a renewal of their license.

Another section of the Liquor Control Act sheds some light on the construction of the word "receiving" as used in Section 46-5-14, **supra**, and as that construction relates to your question. Section 46-5-15(G), N.M.S.A. 1953 Comp. (1975 Supp.), provides in part that:

"Corporations that hold retailer's or dispenser's licenses shall notify the chief of division within thirty (30) days after the occurrence of any change in the officers, directors or holders of more than ten percent (10%) of the voting stock, giving the names and addresses of the new officers, directors or stockholders. . . Except for corporations whose stock is held with a national securities exchange, no corporation holding a liquor license shall transfer a controlling interest in its stock ownership without the prior written approval of the chief of division. The provisions of this section relating to corporations shall be applicable to **new licenses, renewal of existing licenses and transfer of licenses.** (Emphasis added.)

In construing particular statutory provisions to determine legislative intent, an entire act is to be read together so that each provision may be considered in its relation to every other part so as to produce a harmonious whole. **Winston v. New Mexico State Police Bd.**, 80 N.M. 310, 454 P.2d 967 (1969); **State ex rel. Clinton Realty Co. v. Scarborough**, 78 N.M. 132, 429 P.2d 330 (1967). Reading Section 46-5-15(G) and Section 46-5-14(A)(1) together, it seems apparent that a convicted felon or a person convicted of two separate misdemeanor violations of the Liquor Control Act could not "receive" a new license nor a renewal license nor a transferred license. This is particularly so since Section 46-5-19, N.M.S.A., 1953 Comp. requires the Director to

issue renewal licenses only "in strict compliance with the provisions of" the Liquor Control Act.

Even though Section 46-5-15(G) is applicable only to corporations, both corporations and persons must "receive" a renewal license every year since all licenses provided for in the Liquor Control Act expire on June 30 of each year. Section 46-5-16(A), N.M.S.A. 1953 Comp. (1975 Supp.). The assertion that both corporations and persons "receive" a license each renewal year is supported by the introductory language in Section 46-5-18, N.M.S.A. 1953; i.e., "Every applicant for a license, **before receiving** the license. . . ." (Emphasis supplied.) This section sets forth the amount of fees which the various classifications of license holders pay annually to "receive" their authority to conduct business under the Liquor Control Act. If a person or other legal entity holding a license is convicted of any felony at any time following his originally becoming a license holder, or of two separate misdemeanor violations of the Liquor Control Act in any license year, such a person would be disqualified from receiving a renewal of that license on June 30 since that person would be within the class of persons prohibited from receiving licenses under the Act.

Section 46-5-16(A), **supra**, provides that the Director of the Department of Alcoholic Beverage Control must check his files to ascertain whether or not there exists any reason why a license should not be renewed, and if any impediment to renewal is found, the Director must, by certified mail, return receipt requested, notify the licensee of any known impediment not later than June 10. It is the advice of this office that you ascertain whether any current holder of a liquor license of any sort has been convicted of a felony at any time following his originally becoming a license holder, or of two misdemeanor violations of the Liquor Control Act during the last calendar year. If any such persons are found, they must be notified of this impediment to renewal as prescribed by Section 46-5-16(A), **supra**, and given an opportunity for a hearing. Upon a finding that the person has been convicted, the license which expired on June 30 would not be renewed, unless the person has been restored to his civil rights.

## **ATTORNEY GENERAL**

Toney Anaya, Attorney General