

## Opinion No. 79-21

May 4, 1979

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Arthur J. Waskey, Assistant Attorney General

**TO:** James R. Baca, Director, Department of Alcoholic Beverage Control, Lew Wallace Building, State Capitol, Santa Fe, New Mexico 87503

### ALCOHOLIC BEVERAGES

The transfer of a liquor license may be approved from a location within the corporate limits of a municipality to a location within the same county but outside the corporate limits of the municipality and its five-mile buffer zone.

### QUESTIONS

May the transfer of a liquor license be approved from a location within the corporate limits of a municipality to a location within the same county but outside the corporate limits of the municipality and its five-mile buffer zone?

### CONCLUSIONS

Yes.

### ANALYSIS

Section 60-7-29(B) NMSA 1978 specifically provides for the transfer of a liquor license from within the corporate limits of a municipality to a location within five miles of the corporate limits of the municipality. However, there is no express authorization in the Liquor Control Act, Sections 7-17-1 to 7-17-11, 7-24-1 to 7-24-7 and 60-3-1 to 60-11-4 NMSA 1978, for the direct transfer of a liquor license from a location within a municipality to a location within the county but beyond the five mile zone of the municipality.

Nevertheless, a recent opinion by the New Mexico Supreme Court indicates that the approval of a direct transfer of a liquor license from within a municipality to a location in the county beyond the five-mile zone would be legal and proper. In **State ex rel. Anaya v. Jaramillo**, State Bar of New Mexico Bulletin and Advance Opinions, Vol. 18, No. 16, April 19, 1979, the Supreme Court confirmed its earlier unreported decision in **Benavidez v. Department of Alcoholic Beverage Control**, No. 10,353, where it was held that Section 60-7-29, *supra*, does not prohibit the "transfer . . . of a liquor license from within the five-mile zone to a place inside the county but outside the territorial limits of the incorporated municipality and the surrounding five-mile zone."

Thus, since Section 60-7-29, **supra**, expressly authorizes transfers of liquor licenses from within the corporate limits of a municipality to a location within that municipality's five-mile buffer zone, and since the Supreme Court now interprets Section 60-7-29, **supra**, as allowing the transfer from a five-mile zone to an unincorporated area outside that five-mile zone, the transfer from a municipality to an unincorporated area outside the five-mile zone could legally be accomplished in two steps. This being the case, there is no logical reason to require a two-step transfer, and we are of the opinion that the Director of the Department of Alcoholic {52} Beverage Control can validly approve transfers directly from a location within the corporate limits of a municipality to a location inside the county but outside the corporate limits of the municipality and its surrounding five-mile zone.

**ATTORNEY GENERAL**

Jeff Bingaman, Attorney General