

## Opinion No. 87-28

July 1, 1987

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Katherine Zinn, Assistant Attorney General

**TO:** Mr. Ray Shollenbarger, Acting Director, Department of Alcoholic Beverage Control, Villa Rivera Building, 3rd Floor, 224 E. Palace Avenue, Santa Fe NM 87501

### QUESTIONS

Whether governmental licensees may engage in Sunday sales of alcoholic beverages under Section 60-7A-1(B) NMSA 1978 (1986 Cum. Supp.).

### CONCLUSIONS

Yes.

### ANALYSIS

Section 60-6A-10(A) NMSA 1978 (1986 Cum. Supp.) of the Liquor Control Act states: "A governmental entity may sell alcoholic beverages through its lessee at a governmental facility if the governing body applies to the director for a governmental license. **The governmental entity and its lessee shall be subject to all state laws and regulations governing dispensers.**" (emphasis added). Section 60-7A-1(B) NMSA 1978 (1986 Cum. Supp.) regulates Sunday sales of alcoholic beverages: "Subject to the provisions of Subsection E of this section, a dispenser, restaurant licensee or club may, upon payment of an additional fee... obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays..." This section does not provide specifically for Sunday sales by governmental licensees. It is our opinion, however, that under the express provisions of Section 60-6A-10(A), governmental licensees may engage in Sunday sales of alcoholic beverages.

A statute is to be given effect as written. *Wittkowski v. State Corrections Department of the State of New Mexico*, 103 N.M. 526, 710 P.2d 93 (Ct. App.), cert quashed, 103 N.M. 446, 708 P.2d 1047 (1985). It is obvious from the language used in Section 60-6A-10(A) that the legislature intended that governmental licensees should be subject to the same laws and regulations as dispensers. Nevertheless, the legislature continued to list governmental licensees and dispensers separately, but together in various provisions of the Liquor Control Act. See, e.g., §§ 60-7A-1(C) and (D); 60-7A-9; 60-7A-12; 60-7B-1; 60-7B-5; 60-7B-10; 60-7B-11. It could be argued that the legislature did not, therefore, intend that the terms "governmental licensee" and "dispenser" should be used synonymously and, where governmental licensees are not expressly mentioned in the

Liquor Control Act, the legislature intended to exclude them from its provisions, even though dispensers are expressly mentioned.

We believe, however, that merely because the legislature continued to refer to both governmental licensees and dispensers in various provisions of the Liquor Control Act, this does not contradict the clear legislative intent under Section 60-6A-10(A) that governmental licensees shall be governed by the same laws and regulations as dispensers. Legislative intent is determined primarily from the language used in a statute and when that language is unambiguous, no other means of interpretation are necessary. *State v. Sinyard*, 100 N.M. 694, 675 P.2d 426 (Ct. App. 1983), cert. denied, 100 N.M. 689, 675 P.2d 421 (1984). Here, Section 60-6A-10(A) clearly and unambiguously states the legislative intent.

Moreover, where the legislature intended a different result, it knew how to exempt expressly governmental licensees from the laws governing dispensers. See Section 60-6A-10(D) NMSA 1978 (1986 Cum. Supp.) (specifically exempting governmental licensees from the provisions of Section 60-6A-18 of the Liquor Control Act, which limits the number of dispenser's licenses that may be issued in a local option district). Governmental licensees thus are subject to the same state laws and regulations as are dispensers. Furthermore, governmental licensees may be authorized to engage in Sunday sales under the provisions of Section 60-7A-1(B).

#### **ATTORNEY GENERAL**

HAL STRATTON Attorney General