

Opinion No. 87-02

January 26, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Carolyn Wolf, Assistant Attorney General

TO: David Sierra, Director Alcoholic Beverage Control Department, 224 E. Palace, Santa Fe, New Mexico 87501

QUESTIONS

1. Is it a violation of the Liquor Control Act to be convicted of a felony?
2. Does N.M. Stat. Ann. § 60-6C-9 (1978) apply to N.M. Stat. Ann. § 60-6B-1.

CONCLUSIONS

See Analysis.

ANALYSIS

We have been informed that these questions were asked because Southland Corporation, a felon, offered to pay a fine to avoid losing its license in a revocation proceeding.

Section 60-6B-5 states that all licenses for which the Liquor Control Act provides expire on June 30 of each year. The Department may, of course, renew a license but the director first must determine whether any reason exist why a license should not be renewed. See N.M. Stat. Ann. § 60-6B-5 (1978). If the director determines that the license should not be renewed, he shall conduct a hearing, and shall renew the license if he finds that the licensee is qualified. See *id.*

Conviction of a felony is not, standing alone, a violation of the Liquor Control Act under section 60-6B-1 (A); however, persons convicted of any felony cannot receive a license. Moreover, convicted felons cannot receive a renewed license because they would not be qualified to receive a new license. Thus, when a convicted felon receives a new or renewed license, he has violated the Liquor Control Act. Further, a corporation is a "person" under the Liquor Control Act. N.M. Stat. Ann., § 60-3A-3(Q) (1986 Cum. Supp.), defines a "person" as "an individual, **corporation**, firm, partnership, copartnership, association or other legal entity." [Emphasis added]. Clearly, therefore, a corporation is a "person" under the Liquor Control Act and is subject to all of the provisions thereunder.

Section 60-7A-25 provides the penalties for any violation of the Liquor Control Act. Section 60-6C-9 authorizes the Director to compromise the penalty for any violations of the Act when he deems it is in the best interest of the state. Thus, the director could compromise the penalty for violating section 60-6B-1.

Whether the Director may properly permit a convicted felon to hold a license is a separate issue, however. Although section 60-6C-1 does not expressly provide for the revocation of licenses owned by one who is convicted of a felony, it is clear from the structure of the Act and the cases interpreting the Act that the Director not only has the authority and power to revoke or cancel, but has a duty to do so. All licenses provided pursuant to the Act shall be issued by the Director in strict compliance with the provisions of that Act. In *Baca v. Grisolano*, 57 N.M. 176, 256 P.2d 792 (1953), the Supreme Court of New Mexico held that the Liquor Control Division Chief properly revoked or cancelled a license where the posting requirements had not been met. It was argued that since the failure to post was not a ground for revocation stated in the law, the chief had no power to cancel or revoke a license for that reason. The Court held:

In view of the nature of the liquor business as it has heretofore been described by the various opinions of this court any practice of allowing the issuance of liquor licenses without regard to the statutes governing the issuance thereof might lead to intolerable danger and chaos. The Chief of the Division of Liquor Control having power to grant liquor licenses under the provisions of the statute has likewise inherent power to cancel and revoke any license which he finds has been, for any reason, issued without authority or issued in conflict with the statutes governing and limiting the issuance thereof.... The appellant...not only had the right and power to revoke and cancel the license illegally issued, but it was [his] duty... to proceed to cancel and revoke it upon discovering that it had been issued without legal authority and in contradiction of the plain provisions of the statute.

57 N.M. at 189, 256 P.2d at 800-801. Under *Baca v. Grisolano*, the Director has the duty to revoke or cancel a license when he discovers that it has been issued without legal authority and in contradiction of the plain provisions of the statute. For a convicted felon to receive a license would violate the statute, and the Director has no authority to issue such a person a license. Lacking any statutory basis for a felon to hold a license, the Director must cancel or revoke any license that a convicted felon may hold. Nothing in section 60-6C-9 gives the Director the power to waive or disregard the legislature's decision in section 60-6B-1 that convicted felons, or other specified classes of persons, such as minors, shall not hold a license.

The Director may accept a fine for specific violations of section 60-6B-1. The Director may not allow Southland to continue to hold a license because Southland did not meet minimum qualifications for licensure when it received its license. To permit Southland to continue to hold a license would authorize a license in direct conflict with the statute and would be inconsistent with the Supreme Court's decision in *Grisolano*.

We note that section 60-6C-9 was in substantially the same form in 1953 when the Grisolano case was decided, but was not considered in the case. We also note that Section 60-3A-2(A), which sets forth the liquor policy of New Mexico, states as one of its goals that licenses shall not be issued to persons when the issuance is prohibited by law. Any doubt in interpretation of the Act should be resolved in favor of restraining liquor sales, and any loosening of that policy is the business of the legislature. See State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970); 1979 Op. Att'y Gen. No. 79-3.

We therefore must conclude that, because you are without power to authorize a license in conflict with the Liquor Control Act, you cannot permit Southland, with its felony conviction, to hold a license.

Respectfully submitted,

ATTORNEY GENERAL

HAL STRATTON Attorney General