

Opinion No. 87-77

December 17, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Katherine Zinn, Assistant Attorney General

TO: Ray Shollenbarger, Director, Alcohol and Gaming Division, Regulation & Licensing Department, 224 E. Palace Avenue, Villa Rivera Building, 3rd Floor, Santa Fe, New Mexico 87501

QUESTIONS

Whether Section 60-6B-3(A) NMSA 1978 (1987 Repl.) of the Liquor Control Act will prohibit the leasing of governmental liquor licenses after June 30, 1991.

CONCLUSIONS

No.

ANALYSIS

Section 60-6B-12(A) of the Liquor Control Act, Sections 60-3A-1 to 60-8A-19 NMSA (1987 Repl.), creates a "period of economic adjustment" for liquor licenses issued under any prior Act. The period ends on June 30, 1991. Section 60-6B-3(A) mandates: "**Except as otherwise provided in the Liquor Control Act**, no license issued under the Liquor Control Act shall be assigned, transferred from person to person, sold or leased." (Emphasis added). Under this section's express language, liquor licenses issued after July 1, 1981, the effective date of the Liquor Control Act, cannot be assigned, transferred, sold or leased, unless otherwise provided for under the Act.

Section 60-6A-10 provides for governmental licenses. That section reads, in relevant part:

A. 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.

B. A governmental license may be leased to a qualified lessee and may only be used by the lessee for his operation during events authorized by the governmental entity at the governmental facility designated on the governmental license. The governmental entity and its lessee shall not sell alcoholic beverages for consumption off the licensed premises.

C. Each governmental entity holding a governmental license shall annually and not less than sixty (60) days prior to the date for renewal of its license submit to the director documentary proof that its lessee is fully qualified to be a lessee of a governmental license. If the director finds that the lessee is qualified to lease a governmental license, the director shall renew the license for an additional period of one year. If the director determines that the proof is inadequate, he shall notify the governing body of his decision and shall conduct a hearing as provided by law. If the director finds that the lessee does not qualify and the governmental entity does not change its lessee, the director shall revoke the license....

Inasmuch as Section 60-6A-10 specifically provides for the leasing of governmental licenses, it is our opinion that it is a specific exception contemplated by Section 60-6B-3(A) and permits the leasing of governmental liquor licenses issued after July 1, 1981. Section 60-6A-10 would continue to control until changed through legislative action.

By its terms, Section 60-6B-3(A) applies only to licenses issued after July 1, 1981, the effective date of the Act. Section 60-6B-12(C) provides that all licenses issued under any former act may be assigned, transferred, sold, or leased during the period of economic adjustment. Section 60-6B-12(H), however, states that on June 30, 1991, all liquor licenses issued under any former act shall be treated for all purposes as if they had been issued after the effective date of the Liquor Control Act. Thus, after June 30, 1991, Section 60-6B-3(A) would apply to such licenses, and no liquor licenses could be assigned, transferred, sold or leased, except as otherwise provided in the Act. Therefore, because Section 60-6A-10 permits the leasing of governmental licenses, leases issued before June 30, 1981, would remain legal after June 30, 1991.

It is therefore our opinion that the provisions of Section 60-6B-3(A) of the Liquor Control Act will not prevent the leasing of governmental liquor licenses after the end of the period of economic adjustment on June 30, 1991. Any contrary interpretation of Section 60-6A-10 would contradict the common rule of statutory construction that statutes must be construed so that no part is rendered surplusage or superfluous. Matter of Rehabilitation of Western Investors Life Insurance Company, 100 N.M. 370, 373, 671 P.2d 31, 34 (1983).

ATTORNEY GENERAL

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