

Opinion No. 14-1262

July 1, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Narciso Francis, Seboyeta, New Mexico.

LIQUOR.

A man may have liquor in his own house and give it away, although the house is located in a "dry" district. Jurisdiction of a justice of the peace in violation of local option cases.

OPINION

{*122} I have today received your letter of yesterday, in which you inform me that the people of two precincts, Nos. 6 and 18 in Valencia County, in May last, voted their district dry, which must have been under the provisions of Chapter 78 of the Laws of 1913, and you desire to know if any person has a right to bring liquor into his residence, or any other place, and give it away. The prohibition in the statute is against anyone engaging in the barter, sale or exchange of liquor and does not go so far as to prevent a man from having liquor in his possession which he can drink himself or can give to his friends. The legislature could not properly interfere to such an extent with a man's personal liberty as to prevent his using liquor. The danger is, however, that such things as you describe are being used merely for the purpose of evading the law and actually carrying on an illegal business, and if evidence can be obtained of that state of facts, the offender should be prosecuted and punished.

You further ask whether the evidence of a constable or justice of the peace can be taken in court the same as that of other witnesses. There is nothing in the office of a constable or of a justice of the peace which would disqualify him from giving testimony, but it would not be proper for the justice of the peace to testify as a witness in any case in his own court.

You also ask whether you, as a justice of the peace, have jurisdiction to prosecute people who sell or give away liquor in a dry town. As justice of the peace you ought not to prosecute anyone, but you have jurisdiction of cases brought before you by the sworn complaint of any person. As to whether you can try such a case in your dry town and sentence a defendant, if convicted, is not entirely clear under the statute of 1913, but you can, at least, take jurisdiction to hold the offender to await the action of the grand jury and {*123} may require him to give bond for his appearance at the next term of the district court.