

## Opinion No. 14-1263

July 1, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Jesse Ellis, Columbus, New Mexico.

### LIQUOR.

Club organized for the illegal sale of liquor in "dry" districts can be put out of existence.

### OPINION

{\*123} I have just received your letter of yesterday in which you say that a former saloon-keeper has organized and incorporated The International Club for the dispensing of liquors to its own members and the maintaining of pool-tables and other innocent sports for its members.

As you state the facts it seems clear that the so-called club has been created merely for the purpose of evading the law and its business is just as illegal as the sale of liquors in any ordinary saloon. The person, or persons, who sell the liquor are violators of the law and can be proceeded against by complaint before a justice of the peace the same as any other law-breaker. I do not think it is clear, however, that the justice of the peace would have jurisdiction to try the case, but he could, at least, hold the accused persons to await the action of the next grand jury and require the giving of a bond for that purpose.

Sometime ago I heard that such a club, so-called, had been incorporated, for the purposes which your letter indicates, to do business in Columbus and a little later I heard that the business had been abandoned and that the incorporators had applied to the State Corporation Commission to get back the money which they had paid for fees, from which I had inferred that the unlawful intention had been abandoned.

As to whether the action of the persons engaged in this business is a single continuing offense or not, I am of opinion that each sale might be a separate and distinct offense under Section 4139 of the Compiled Laws of 1897. Under Section 12 of Chapter 78 of the Laws of 1913, there might be some room for argument as that section provides that any person who shall engage in the business, upon conviction, shall be punished, but the earlier section of the compiled laws distinctly includes any kind of a club or association. The persons who actually sold the liquor could be prosecuted under Section 4139 of the Compiled Laws, while the owners of stock in the so-called club might be prosecuted under Section 12 of said Chapter 78.

I also incline to the belief that the club could be put out of existence, {\*124} because organized for an illegal purpose and carrying on an unlawful business, by proceeding in

the name of the state for that purpose. Your district attorney would be a proper person to take up this matter, or if you should employ counsel of your own and he should advise a suit to destroy the existence of the club, I will give him authority to use my name as Attorney General in any such case which he may desire to prosecute.