

Opinion No. 14-1257

June 25, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: John A. Young, Attorney at Law, Gallup, New Mexico.

LIQUOR.

Right of a municipality to limit the number of saloons within its jurisdiction.

OPINION

{*117} I have your letter of the 24th inst. asking for the opinion of this office as to the right of a municipality, under the provisions of Subsection 18, Section 2402 of the Compiled Laws of 1897, and Chapter 59, Laws of 1907, amendatory thereof, to limit the number of saloons in such municipality, and the power of the municipality to limit the district within which saloons may be established.

As to the power of a municipality to limit the number of saloons, the Supreme Court of Minnesota in *State, ex rel. Howie, v. Common Council of the City of Northfield*, held under a statute similar to ours that a city council may, if in its judgment the best interest of the inhabitants of the city demand it, limit the number of saloon licenses to be granted. This case was decided December 30, 1904, and can be found in 101 N. W. 1063. I presume that this volume is available in Gallup and I believe that you would better make a careful examination of it. The Court in that case said, among other things, the following:

"The power to regulate and control includes the power to do all that is deemed, in the judgment of the council, for the best interests of the municipality and its inhabitants. It necessarily confers the power to refuse a license, or to limit the number of licenses to be granted, when, in the judgment of the council, the welfare of the city suggests such action."

I believe that a municipality, before issuing any licenses for the sale of liquor, should carefully consider the provisions of Chapter 59 of the Laws of 1907 as to the location of the saloon, but if the holding by the Minnesota Court is correct, the issuance of a license is entirely within the discretion of the officers of the municipality, or of the town or city council. It will be observed that in the eighteenth subdivision of Section 2402 of the Compiled Laws of 1897, a municipality is given "the **right** to license, regulate, or prohibit the selling or giving away of any" liquor and in Chapter 59, Laws of 1907, it is provided "That no city council, or board of trustees in towns, **in exercising its right to grant licenses**" shall discriminate, etc. If no discrimination is shown, has not a city council the right to limit the number of saloons, as it has, undoubtedly, the right to absolutely prohibit the selling of liquor? I am informed that the city council of Santa Fe has adopted

some such ordinance limiting the number of saloons or places where liquor may be sold, and that it is useless for any person not now engaged in the selling of liquor to apply for {**118*} a license. This office is inclined to agree with the reasoning of the Minnesota Court, that a city council may limit the number of saloon licenses to be granted.