**Opinion No. 14-1332**

September 19, 1914

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

**TO:** Mrs. C. H. Conner, Albuquerque, New Mexico.

**LIQUOR.**

As to the dispensing of liquor by a club to its members.

**OPINION**

*{*193}* I have just received your letter of yesterday in which you say that as Director of the Civic Department of the Woman's Club of *{*194}* Albuquerque, you are writing in their behalf, asking for an opinion regarding the sale of liquor in club rooms without first securing state, county and city license.

There are but two licenses required for the retail sale of liquor, one prescribed by the statute of the state which is issued by the county officers, and the other, the license required under city ordinances.

The answer to your general question is somewhat difficult. I have no hesitation in saying that if a club is organized for the purpose of dispensing liquors to its so-called members, it must be regarded merely as an attempt to evade the law with regard to licenses, and that its proceedings in that direction would be unlawful in the absence of compliance with the statutes and ordinances requiring licenses. I have had occasion recently to state something of this kind with reference to attempts in places which had been voted "dry" by the people, to establish clubs practically for no other purpose than the dispensing of liquor to members. I have no doubt that in such cases any person can become a member and there is no way by which such proceedings can be justified.

As to clubs not organized primarily and principally for the liquor business, but which do dispense to their members alcoholic liquors as something incidental to the main purposes of the club, there is considerable difference of authorities in the adjudicated cases in different parts of the country, and the most recent text book on the subject of The Law of Intoxicating Liquors, the authorities of which are Woollen & Thornton, at Section 792, states that the greater number of cases hold that social incorporated clubs are not required to have a license in order to sell to their members, and quotes at considerable length as a leading case on the subject, from the case of People vs. Adelphi Club, 149 N. Y. 5. A part of that quotation, which will be instructive, is as follows:

"The club was incorporated as a social club, to establish and maintain a library, reading and assembly rooms, and to promote social intercourse among its members. It was

managed by a board of trustees with a membership limited to one hundred and fifty persons of full age and residents of the city of Albany. A person could be admitted as a member only when proposed by some member to whom he was personally known, and upon the recommendation of the board of trustees, and by an election by the members at a regular meeting of the club by a two-thirds vote. There are initiation fees and annual dues of more than a nominal amount. The club maintained a club house in Albany, in which were parlors, a ballroom, dining-room, kitchen, library, card rooms, billiard, pool and store rooms, with apartments for the janitor. Meals, cigars and liquors were served to members of the club upon their written orders at a price fixed therefor by the house committee which was charged to the member, who paid therefor monthly. The money so paid in by the members, together with the annual dues, was used in defraying the general expenses of the club, its library, reading rooms, servants, lights and fuel, and in keeping up its stock of provisions, cigars and *{*195}* liquors. Its business was conducted solely for the entertainment and recreation of its members, and not for the purpose of deriving a profit beyond the defraying of its expenses."

Some other facts as to the methods of the club were set out which are not material to our present discussion, and the court held that the club was not liable for having sold liquor illegally and that it did not require a license, and that the statute did not authorize the issuance of a license to such a club, and a further quotation is made from the opinion of the court, which is as follows:

"As we have seen, the defendant is a social club organized under the statute for a legitimate purpose, to which the furnishing of liquors to its members is merely incidental and is not unlike the supplying of dinners or articles which the members may desire for his own comfort and entertainment. And while the property and supplies are technically owned by the club, each member is, in equity, an equal owner in common. It was not organized for the purpose of engaging in a business for profit, or for the traffic in liquors. It engages in no business other than that which pertains to the maintenance of its library, reading rooms, and the social intercourse and comfort of its members. Liquors, as well as other supplies, are distributed to its members upon the written order of the member at a price fixed by the officers of the club designed to cover the purchase price and disbursement in serving. These orders pass to the steward or treasurer of the club and are charged against the member, who settles therefor monthly. We think that the transaction with Stark did not amount to a sale within the meaning of the statute. It was but a distribution among the members of the club of the property that belonged to them. The fact that a payment was made does not change the character of the act, for it was but the means adopted by which each member could recover his own and not that belonging to his fellow member. The payment went into the treasury to ultimately restore that which he had taken."

The foregoing is a fair sample of the reasoning of the numerous cases by which courts have held against the necessity of such clubs having a license in order to furnish liquors to their members.

It is quite true that there are cases which do not harmonize with the one from which the foregoing quotations are made, and it is not possible to predict with certainty which line of cases our courts might follow. We have a statute which you will find in Section 4139 of the Compiled Laws of 1897, which declares it to be unlawful for any kind of a club or association "to sell, directly or indirectly," any alcoholic liquors without first having procured a license to sell the same, but you will see that this involves the same question which was so carefully considered in the New York case as to what is a sale. If we take the view that the stock of liquors is the common property of all members of the club, and that when a member obtains a portion thereof and contributes a proportionate amount of the costs of purchasing and serving the liquor, then it ought not to be considered as a sale as the member is getting only a part of the property of which he is a joint owner, but if we take the view *{*196}* adopted by other courts that any transaction of this kind constitutes a sale, then the club becomes subject to the license laws.

It is my own opinion that the decisions which are like the one in the New York case, are founded upon better reasoning and have a more correct regard for the legal rights of the citizen than those which take the opposite view.