

Opinion No. 15-1504

April 23, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Wm. J. Lemp Brewing Company, St. Louis, Missouri.

As to the sale of malt, vinous and spirituous liquors.

OPINION

{*88} Your letter of the 13th instant, addressed to the Secretary of State at Santa Fe, has been by him referred to me, and has just reached my hands. What you ask is, in substance, information as to any statutory requirements or limitations upon the sale of a fermented beverage containing less than one-half of one per cent alcohol, not capable of producing intoxication. As to its use you say that the Federal authorities have ruled that such fermented product may be sold without the payment of an internal revenue special tax.

There is no distinct legislation in New Mexico on the subject of such a beverage. The general statute providing for liquor licenses refers repeatedly to "spirituous, malt or vinous liquors," without any attempt at definition or classification of such liquors.

We have two local option statutes which are printed as Chapters 75 and 78 of the session laws of 1913, the first of which provides for elections in municipalities and the other in rural districts. These statutes provide for the submission to the electors of the question as to whether or not the barter, sale and exchange of intoxicating liquors shall be prohibited, and if there were nothing more on the subject of what kind of liquors were to be prohibited it would be clear that this would not include such a product as yours, but each of these acts contains a section as follows:

"The words 'intoxicating liquors' as used in this act shall be understood to include all malt, vinous and spirituous liquors."

{*89} I believe the foregoing summarizes very briefly all that there is in the legislation of this state necessary for you to consider in connection with the subject of your letter.