

Opinion No. 15-1529

May 17, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. D. Atwood, Artesia, N. Mex.

As to exceptions from the prohibition of the sale of liquor where the result of an election is in the affirmative.

OPINION

{*114} I have received your letter of the 15th inst. in which you ask my opinion as to the matter of proper ordinances to be passed by the Board of Trustees of your town to carry into effect the provisions of Chapter 75 of the Laws of 1913 if the town shall vote to prohibit the barter, sale or exchange of intoxicating liquors at the election which you say is to be held on June 15. The difficulty which you have found is as to the lack of any provision for exceptions from the prohibition, such as is contained in Chapter 78, which applies to elections held outside of municipalities. You refer to the four exceptions in the latter, which are for medicinal, scientific, mechanical and sacramental purposes. As to the fourth of these exceptions, that would be in effect in towns in view of Section 13 of Article XX of the Constitution, which declares that "The use of wines solely for sacramental purposes under church authority at any place within the state shall never be prohibited." While that clause refers only to the use of wines for such purpose, yet certainly the spirit of that section would be against the prohibition of sale for such purposes.

As to the other exceptions, there seems to be no provision made for anything of that kind within municipalities, and I am unable to read into the act anything which would permit the sale of liquors for medicinal, scientific or mechanical purposes. Even in the {*115} case of the exceptions provided in Chapter 78, the sale for those excepted purposes can be only by licensed druggists or apothecaries and with the exception of wine for sacramental purposes, can be made only upon prescription by a licensed physician and then in quantity not exceeding one pint. There is a further provision that any physician who shall prescribe liquor other than for medicinal purposes, shall be punished by fine or imprisonment, or both. Taking these two provisions together, it would appear to be very difficult for anyone to get intoxicating liquors for scientific or mechanical purposes.

I must say I do not exactly understand what sort of ordinances should be passed to carry the provisions of the law into effect. The statute itself fixes a punishment for any violations of the provisions of the act, but the act itself does not prohibit the barter, sale or exchange of intoxicating liquors except as to the district within two miles of the limits of any municipality adopting prohibition according to the terms of the act. Perhaps you would need an ordinance declaring the prohibition and perhaps providing for some

details of administration. I am not entirely clear whether you could fix a penalty for the violation of the ordinance or not as it might be held that the penalty declared in the act itself excluded any power on the part of the town to declare a punishment.