Opinion No. 15-1543

June 4, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. C. Royall, Assistant District Attorney, Silver City, N. M.

As to issuance of retail liquor license for establishment within five miles of United States hospital at Fort Bayard.

OPINION

*{*123}* I have your letter of the 28th ult. which did not reach this office, however, until day before yesterday, in which you refer to a letter from this office of April 27, 1911, addressed to Mr. W. D. Murray with reference to the issuance to him of a retail liquor license to sell liquor at his general merchandise establishment, situated within five miles of the United States Hospital at Fort Bayard. You say that since that time a license has been issued to Mr. Murray from year to year in the same form issued to all saloon men, but across the face of the license has been written "This license does not authorize you to conduct a saloon nor to sell liquor to be drunk upon the premises."

You say that similar licenses have also from year to year been issued to two other persons who have conducted a saloon under that license, neither of them being in any other business, but using their licenses for the sale of liquor alone, and as one of these licenses expires on the first of August, you wish to be in a position to advise the county clerk regarding the issuance of a license for next year.

As stated in our letter of April 27, 1911, the only matter to be passed upon is as to the meaning of the word "saloon" and while a number of definitions in adjudicated cases in different parts of the country can be found which vary to some extent, yet, when taken *{*124}* in connection with all of our legislation on this subject, I believe no better definition can be given than the one quoted in that letter from the case of Town of Leesburg v. Putnam, 103 Ga. 110, which it may be well to repeat here. It is as follows:

"A saloon is a public room for specific uses, especially a bar room or grogshop, as a drinking saloon, etc., or a place devoted to the retailing and drinking of intoxicating liquors. * * * The terms 'bar room' and 'saloon' are inseparably connected with that class of liquor traffic formerly represented by what was called 'tippling house' or 'grogshop.' The use of either term conveys at once the idea of a place where liquors are sold in such quantities as to be **drunk upon the premises."**

The thing which is forbidden by Section 2 of Chapter 115 of the Laws of 1905, which is the statute for consideration in this matter, is the establishing or conducting of a saloon for the sale of spirituous, vinous, or malt liquors within a distance of five miles of any United States Government Sanitorium or within certain other distances of military

reservations, of the New Mexico College of Agriculture and Mechanic Arts and of the University of New Mexico and the School of Mines. The section further provides that no license shall be issued for such purposes, but the section is not to apply to any saloons previously established.

I do not attach great importance to the idea that the sale of liquor in connection with some other mercantile business necessarily changes the nature of the place where it is sold from a "saloon" to something else. There might be in connection with a general mercantile establishment a place for the sale of liquors which would have all the characteristics of an ordinary saloon as defined in the Georgia case from which I have hereinbefore quoted.

A man might sell liquors at retail within the prohibited distances provided that he did not do so by the methods employed in a saloon. You say in your letter that the other persons who have had licenses did conduct a saloon, and the fact that they had a license would be no defense against a prosecution for a violation of the law in having done so.

I do not find that our statutes provide for any form of license for a retail liquor dealer, but there appears to be, as you indicate in your letter, in Section 4123 of the Compiled Laws, a recognition of five different kinds of licenses, a dram-shop license, a hotel license, a grocery license, and a license for druggists or for any other place, house or person to sell liquors, and requires the making of an application for such a license to the board of county commissioners or to the authorities of incorporated places. In passing, I call your attention to the fact that the making of any application to county commissioners or municipal officers appears to be done away with by Section 6 of Chapter 108 of the Laws of 1901. Section 2 of the act of Chapter 115 of the Laws of 1905, which we are now considering, appears to create another kind of retail liquor license issued for the purpose of establishing and conducting a saloon unless, perhaps, this may be considered as synonymous with the "dram shop license" mentioned in Section 4123 as I believe it *{*125}* really is. While the amounts of money to be paid for any of these licenses for the retail sale of liquor is the same, yet it appears to me that it would be proper and perhaps necessary to have an appropriate form of license for each of the kinds of dealers recognized by the statute, and under a hotel license or grocery license or a license for druggists, it would not be proper to establish and conduct a saloon at any place. I am quite clear that it would not be proper for the county clerk to issue a license for the purpose of establishing or conducting a saloon within a distance of five miles of the Fort Bayard Reservation, and this would seem to reduce the licenses which could possibly be issued to do any retail liquor business within that forbidden distance to a hotel license or a grocery license or a license for druggists, and if, under any such license a man should establish and conduct what the courts would say is a "saloon," I believe that the possession of such a license would be no defense if the licensee were prosecuted for the offense created by Section 2 of said Chapter 115. In other words, if an application should be made for a retail liquor license without specifying more than is required by Section 6 of Chapter 108 of the Laws of 1901, the county clerk would be justified in refusing to issue the license, but if application were made for a hotel license,

grocery license or license for druggists for the purpose of selling liquors at retail, such a license could lawfully be issued. Then, if the holder of the license should conduct what the courts would consider a "saloon" within the meaning of our statute, it would become the duty of the proper authorities to prosecute him under Chapter 115 of the Laws of 1905.

While I have not repeated and answered categorically your questions, yet I think that the foregoing substantially answers all that you ask.