

Opinion No. 15-1603

July 29, 1915

BY: FRANK W. CLANCY, Attorney General

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

Prohibition of sale of intoxicants by druggists in dry districts.

OPINION

{*176} I have before me your letter of the 26th inst. relative to the matter of exceptions to the prohibition of sale of intoxicating liquors in municipalities. You call attention to the fact that while Chapter 78 of the Laws of 1913, which relates to prohibition in districts outside of municipalities, provides four exceptions to the prohibited sale of intoxicants, yet there is no such exception to be found in Chapter 75 which relates to local option in municipalities.

I had long since discovered this inconsistency and have been expecting that there would be some difficulty over it, but it had not occurred to me until your letter called attention to it, that the language in Chapter 78 is such that it might be considered applicable not only to districts outside of municipalities but also to incorporated places.

I am inclined to the opinion that your suggestion is well-founded, and considering the two acts as a whole (and they have been reenacted by the legislature in the recent codification of the statutes), the exceptions contained in Section 8 of Chapter 78 may reasonably be held to apply to municipalities as well as the rural districts. That statute declares that it shall be unlawful to barter, sell or exchange intoxicating liquors "at any place in this state" where the business is prohibited, except that licensed druggists or apothecaries may sell such liquors at such places for medicinal, scientific, mechanical or sacramental purposes as provided in the statute. It is indeed, more reasonable to hold that this section is applicable to incorporated places than to others because there are comparatively few licensed druggists outside of incorporated cities and towns. I recommend that you include in your ordinance the exceptions set out in Section 8 of Chapter 78, using the same language.