

Opinion No. 15-1653

October 16, 1915

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. H. C. Mead, Attorney at Law, Antonito, Colo.

Retail and wholesale liquor licenses.

OPINION

{*223} Owing to my having been away from the office for several days, I have not been able to give your favor of recent date a more prompt reply. I trust, however, delay has not been the cause of any inconvenience.

The law in regard to the licensing of and requirements for the establishment of saloons in this state is contained in Chapter 59 of the New Mexico Statutes Annotated, 1915, Section 2875 of which is as follows:

"Upon every license granted under the provisions of this article, for the retail sale of malt, vinous and spirituous liquors there shall be collected before such license is issued, a tax as follows, viz: For such license to do business in a precinct, village or town without the limits of any village, town or city having not more than five hundred inhabitants, and in such town or city having not more than five hundred inhabitants, one hundred dollars; in a precinct, village, town or city of not less than five hundred and not more than one thousand inhabitants, two hundred dollars; in a precinct, village, town or city having more than one thousand inhabitants, four hundred dollars.

Provided, That no license shall be granted for the sale of malt, vinous or spirituous liquors at any place in any county of this State, except within the limits of a city, town or village containing at least one hundred inhabitants; and any officer authorizing or issuing a license contrary to this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars."

I believe that this section will probably furnish you with all of the information requested in your letter. You will note that saloons may be opened in any precinct, village, town or city having a population of one hundred inhabitants, and it is not necessary that the units named be incorporated. A saloon may be established in any settlement containing the required number of inhabitants provided that a license can be procured from the authorities authorized to issue the same. The county license for a retail dealer is \$ 100 where the inhabitants of the community do not number more than five hundred and where the community is not within the limits of a village, town or city. If the saloon is located within the limits of a village, town or city, then there is usually a municipal

license also required, the amount of which is dependent upon the ordinance of the particular community.

Wholesale dealers in spirituous or malt liquors or wines are required to pay a county license of \$ 100.00

{*224} The act further provides that saloons shall be prohibited within five miles of a United States government sanatorium or within a distance of two miles of any military reservation in the state, or to dispose of liquors in less quantities than five gallons within three miles of any camp, assembly of men engaged in construction of any railroad, canal, reservoir, public work or other kindred enterprise where twenty-five or more men are engaged, provided that these provisions shall not apply to sales made under a license issued to authorize such sales in any incorporated town or city or towns of more than three thousand inhabitants. There are other prohibitions contained in the act which would hardly be of interest to your client, however, in view of the fact that the country where his saloon may be located is so sparsely settled.

There are further prohibitions contained in Sub-Section 18 of Section 3564 of the statutes which apply only to incorporated cities or towns. This section, among other things, provides that no city council or board of trustees in towns shall grant any license for the sale of liquors on any lot where there is not a saloon in operation at the time of the application for such license, except upon petition and written consent of the owners of more than one-half of the lots of the half block in which such lot is situated, and that no license shall be granted for the sale of liquors within one block or square of any church, public library or public school, nor in any purely residence district.

I trust that the foregoing will answer your purpose, but in the event that you require anything further, I shall be glad to have you command me.