

Opinion No. 15-1702

December 18, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. I. C. Floersheim, Springer, New Mexico.

As to power of village to impose and collect a retail liquor license.

OPINION

{*272} I have received your letter of the 16th instant relative to the power of the village of Springer to impose and collect a retail liquor license, Springer having been incorporated under Chapter 117 of the Laws of 1909, and upon its receipt I was hopeful that you had called our attention to something which would appear to authorize the imposition and collection of such a license, as we would be glad to acknowledge any mistake or oversight, and moreover, I believe it is desirable that retail liquor dealers should pay licenses if possible. Upon examination of the sections of the statute to which you refer, Sections 2946, 2947, Codification of 1915, I am not able to see how that can affect the matter. Section 2946 has no application except to municipalities where there has been in existence an ordinance prohibiting the liquor business, and it states that such an ordinance cannot be repealed except by petition and election as provided in the statute, and if such ordinance be so repealed, the municipality may then license the liquor business. To bring about such a condition, you see that we must first have the ordinance prohibiting the business, and second, a petition and election by which that prohibitory ordinance is repealed. Has your village ever had any such prohibitory ordinance, and has it been repealed by election? It is very doubtful, to say the least, as to whether it could have any power to pass such a prohibitory ordinance so as to lay the foundation for the exercise of the power to license upon its repeal, as provided in Section 2946. The only thing in the Act of 1909 which could imply such a power is to be found in the first clause of Section 3771 of the Codification, which gives such villages "power, by ordinance, to prevent the presence within their limits of anything dangerous, offensive, unhealthy or indecent."