

Opinion No. 16-1767

March 31, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mrs. L. F. Wilson, Folsom, New Mexico.

Selling of liquor or tobacco to a minor and to habitual drunkards.

OPINION

{*337} I have just received your letter of inquiry as to certain points of the law concerning saloon-keepers, and will answer your questions as briefly as possible, consistent with clearness.

No notice of any kind is required to be given to a saloon-keeper as a foundation for prosecution for allowing minors to frequent his saloon. By Section 2915 of the Codification of 1915, any saloon-keeper who permits any minor to play billiards, pool or any game of cards or dice, or any other game, on his premises, may be punished by a {*338} fine of not less than ten dollars, nor more than one hundred dollars. By Section 2916 it is made an offense for any person to sell or give to any minor under the age of eighteen years, or to any pupil of any school or educational institution, any intoxicating liquor or tobacco in any form, except upon the written consent of the parent or guardian of such minor or pupil. By Section 2917 it is made an offense for any proprietor or manager of any saloon where intoxicating liquor is kept or offered for sale, or where gambling is carried on or permitted, to permit any minor under twenty-one years, or any pupil of any school or educational institution, to loiter upon or frequent the premises belonging to such saloon, or to engage in games or amusements of any kind thereon. By Section 2918 every person maintaining any establishment where intoxicating liquor or tobacco is kept or offered for sale, must keep posted in a conspicuous place within his place of business, a printed copy of the law. By Section 2919 any violation of the three preceding sections is made punishable by a fine of not less than twenty-five nor more than one hundred dollars, or imprisonment for not less than thirty days nor more than three months, or both, and this section makes it the duty of the county superintendent of schools to prosecute before justices of the peace all persons violating these sections.

You ask whether a wife can serve notice on a saloon-keeper not to allow her husband to frequent the saloon and if there is a law by which she can prosecute saloon-keepers for selling whiskey to her husband, and whether she must serve notice first. There is no statute which forbids the frequenting of a saloon by men, and the serving of a notice not to allow a husband to frequent a saloon would have no effect. There is a law to be found in Section 2923 of the Codification which makes it an offense for any person to sell, barter or give any intoxicating liquor to any person in the habit of becoming intoxicated after notice shall have been given by the wife, parent, brother, sister or child of such

person, or to dispose of such liquor to any person when intoxicated, or to any minor without the consent of his parent or guardian, and upon conviction he may be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment for not less than ten nor more than sixty days, or by both. This must be the statute which you had in mind when writing.

The next two sections of the Codification relate to similar subjects. Section 2924 makes it an offense for any person to procure or cause to be procured any intoxicating liquors for any habitual drunkard, knowing him to be such, and on conviction may be punished by a fine in any sum not less than one hundred dollars nor more than three hundred dollars, or by imprisonment for not less than three nor more than twelve months, or by both. By the terms of this section the offense is a felony and can be prosecuted only by indictment presented by a grand jury in the district court.

Section 2925 gives a right of action to any husband, wife, child, parent, guardian, employer or other person who may be injured in person or property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, against any person who by selling or giving intoxicating liquors to any habitual {^{*339}} drunkard may have caused the intoxication in whole or in part of such drunkard, but no liability can be held to accrue against such person unless notice be first given not to sell or give any intoxicating liquors to such habitual drunkard. This provides only a civil remedy for damages.

You further ask if there is a law prohibiting saloons within three hundred feet of a post-office. I know of no statute containing such a provision.

There are some statutory prohibitions as to locations of saloons, to be found in Sections 2889, 2890 and 2891 of the Codification, but no reference is made to post-offices. Section 2876 prohibits the issuance of any license for a retail liquor business except within the limits of a city, town or village containing at least one hundred inhabitants.

If you desire to examine the statutes herein referred to you can undoubtedly find a copy of the Codification in the office of your justice of the peace as every justice of the peace in the state has been furnished with a copy.