

Opinion No. 17-1970

April 7, 1917

BY: Attorney General.,

TO: Hon. L. C. Mersfelder, Senator from Curry County, Albuquerque, New Mexico.

Construction of Local Option Law.

OPINION

I acknowledge receipt of your letter making inquiry as to the operation of the act of the last legislature created by Senate Bill No. 188. The act referred to amends Section 2927, Code 1915, which section is a part of the act which provides for submission of the issue of prohibition to an election in a district to be designated by the board of county commissioners. Section 2927 contains the following provision:

"Provided that it shall not include any territory within any incorporated city, town or village, whether incorporated under general or special laws."

The act of the last legislature referred to, in amending said section adds after the word "village," the following words: "of more than 1000 population." From this it may be seen that the district prohibition act has been amended to cover territory designated by the county commissioners, embracing cities, towns or villages of less than 1000 population.

We have another local option prohibition law in our statutes set forth in Sections 2940 to 2948, inclusive. This act is confined to municipalities and was enacted as Chapter 15, laws of 1913. Section 2944, Code 1915, being a part of said municipal local option act reads as follows:

"Such question shall be submitted but once every four years, and then only upon petition filed as in this article provided."

The question submitted by you is as to the effect of the act of the last legislature upon towns and villages having a population of less than 1000 in which prohibition elections have been held within four years by authority of the municipal local option law.

The authorities are uniform in holding that one does not acquire a vested right by the issuance of license to sell liquor. After the issuance of license local option elections may be held which will terminate the right to sell liquor, and prohibition acts may be passed which do not submit the question to local option, but which peremptorily terminate the right to sell liquor. It is further my opinion that no rights were acquired under the municipal local option law after an election was held which could not be terminated by subsequent legislation. The municipal local option act could have been repealed and a new act could have provided for the holding of an election in the identical territory within

four years of the holding of the original election. Likewise the law could be so amended as to authorize the inclusion of towns or villages of less than 1000 population in the district prohibition law. This was done by the act of the last legislature. In my opinion an election may be held in districts designated by the county commissioners under the provisions of the district local option law, as amended to include towns or villages of less than 1000 population, and that the result of such election will be binding upon such towns or villages, although an election has been held therein upon the issue of local option within four years.