

Opinion No. 17-2043

August 10, 1917

BY: HARRY L. PATTON, Attorney General

TO: Mr. E. P. H. Roy, Roy, New Mexico.

The Village of Roy Cannot Regulate the Number of Saloons by Ordinance.

OPINION

I am in receipt of your letter of the 7th instant in which you ask an opinion as to the right of the incorporated village of Roy to regulate the number of saloons. You further say that said village was incorporated last November and that the village council has passed an ordinance declaring the number of saloons which shall be allowed to do business in said village.

If your village has authority to pass such ordinance, it must be granted by Section 3771, Codification of 1915, or Section 3775, of said Codification. Section 3771 reads as follows:

"That villages incorporated under the preceding sections shall have the power, by ordinance, to prevent the presence within their limits of anything dangerous, offensive, unhealthy or indecent and to cause any nuisance to be abated; to regulate the transportation, storage and keeping of gun-powder and other combustibles and explosives, oils, gasoline and other articles which may endanger the property of such village; to prevent fast or immoderate riding or driving through or upon the streets, alleys or public grounds of such village; to establish markets and provide for their regulation and conduct; to prevent riots, disturbances or disorderly assemblages; to suppress and restrain disorderly houses or houses of ill fame and to provide for the punishment of persons who shall violate such ordinances."

Section 3775 grants the power to restrict and regulate all theatres, halls or other houses of entertainment. I hardly think that the provisions of Section 3771 are broad enough to authorize the council to pass such ordinance, and I do not think that the courts would hold that saloons are considered houses of entertainment, and, for that reason, I am of the opinion that the provisions of Section 3775 do not apply. If your village had been incorporated under the Act of 1891, (Sections 3745 to 3763, Codification of 1915), it would have had greater powers, but your village was incorporated under the laws of 1909 (Sections 3764 to 3778, Codification of 1915), and the powers are restricted to those conferred in those sections.

I do not overlook the fact that, under the provisions of the 18th sub-section of Section 3564, cities are given the authority to license, regulate or prohibit the selling or giving

away of intoxicating liquors, but this power is not conferred upon villages of the class of Roy.

In my opinion, your village has not authority to pass an ordinance regulating the number of saloons within its limits.