

**Opinion No. 18-2132**

October 3, 1918

**BY:** HARRY L. PATTON, Attorney General

**TO:** Weltmer-Burrows Drug Company, Santa Fe, New Mexico.

The Vendor of Liquor for Medicinal Purposes Is Responsible for the Bona Fides of the Sale. Whiskey Cannot Be Sold for Medicinal or Any Other Purpose.

**OPINION**

Replying to your request for an opinion relative to that part of the prohibition law which makes an exemption of certain liquors when sold for medicinal purposes, we have to advise that it is only when such liquor is intended to be and is actually used for medicinal purposes, that a sale can be lawfully made.

The exemption in the law is as follows:

"Provided nothing in this section shall be held to apply to denatured or wood alcohol, or grain alcohol when intended and used for medicinal purposes," etc.

In our opinion the use of the conjunction "and" between the words "intended" and "used" makes it necessary in order for a sale to be lawful, that the liquor be intended to be used for medicinal purposes, and that it be actually so used. The burden of showing that both these requirements have been met rests upon the seller, for when a sale of intoxicating liquors is shown to have been made, the presumption is that such sale is unlawful. This may seem a hard construction, but when a special privilege is conferred by a statute, the terms and provisions of the statute conferring such privilege must be strictly followed, and if a sale is made without complying with all the restrictions the seller makes such sale at his peril.

Finally you are advised that the exemption extends only to denatured or wood alcohol and grain alcohol. There is no authority for the sale of whiskey under any circumstances.