

Opinion No. 21-3118

September 23, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Honorable B. C. Hernandez, Collector Internal Revenue, Albuquerque, New Mexico.

State Laws Do Not Prohibit Manufacture of Intoxicating Liquor [Illegible Word] Beverage Purposes For Personal Use.

OPINION

{*88} In reply to your letter of the 19th instant asking for an opinion from this office, construing the provisions of Article XXIII of the Constitution and Chapter 151, Laws 1919, being the prohibition amendment and the enforcement act passed by the legislature supplemental thereto, I would advise you as follows:

You state that many persons have applied to your office for permits to manufacture two hundred gallons of wine or less, the applications being based upon the ruling made by the Commissioner of Internal Revenue that under the Federal Prohibition Act that quantity of wine may be made for a person's own use.

You will note that the language of the amendment and also of the enforcement act is as follows:

"No person, association or corporation shall, within this state, manufacture for sale, barter or gift, any ardent spirits, ale, beer, alcohol, wine or liquor of any kind whatsoever, containing alcohol"

You will also note that Section 2 of Chapter 151, Laws 1919, provides that:

"It shall be unlawful for the proprietor, owner or manager, or his or her family, or agent, servant or employe of the proprietor of any hotel, rooming house, or place where lodging is furnished for hire, restaurant or place where meals are served for compensation, or any pool or billiard hall, to bring into, serve or dispense or have or keep in or about such building or place, any intoxicating liquor of any kind or character, provided that the provisions of this section as to possession shall not apply to the portion of said premises or buildings used and occupied exclusively as the home of any person; but {*89} it shall be unlawful for any person to serve or dispense, or permit to be served or dispensed in or about such premises, any intoxicating liquors to any person."

It is quite apparent from a reading of the two acts that it was not the intent of the legislature in the amendment proposed and adopted, or in the enforcement act, to prevent the manufacture of liquor for beverage purposes by a person for his own use.

In the enforcement act, individuals in their own homes are excepted from that part of the law which does not permit the possession of liquor in public places.

For the foregoing reasons, in my opinion, if there is nothing in the federal law that prohibits, persons may manufacture any kind of intoxicating liquor upon their own premises for their own personal use.