

## Opinion No. 23-3715

May 12, 1923

**BY:** JOHN W. ARMSTRONG, Assistant Attorney General

**TO:** Requested by: Hon. Dillard H. Wyatt, District Attorney, Roswell, New Mexico.

**The Provisions of Chapter 118, S. L. 1923, the Prohibition Act, do not Give the Right of Search Warrant.**

### OPINION

{\*67} We have your request as follows:

"I would like to have your opinion as to whether or not there is any possibility of issuing a search warrant for intoxicating liquors under our new prohibition statute.

"I have read and studied the statute thoroughly, and cannot figure out any possible construction that would give the right of search warrant under it. It seems to adopt only the penal provisions of the Volstead Act, but if there is a chance at all of obtaining search warrants under it, we want to do so."

The Eighteenth Amendment to the Constitution of the United States provides that the Congress and the several states shall have concurrent power to enforce said amendment by appropriate legislation.

Sections 1 and 2 of Chap. 118 S. L. 1923 adopts the "penal provisions" of the National Prohibition Act and vests the courts of this state with jurisdiction to enforce such provisions, and provide that all acts and omissions prohibited or declared unlawful by the Eighteenth Amendment to the National Prohibition Act are prohibited and declared unlawful and violators thereof are subject to the "penalties" in the National Prohibition Act.

Section 4 of the 1923 Act makes extended provisions to govern unlawful transportation of liquor and seizure of vehicles used in such transportation.

Section 5 of the 1923 Act relates to proceedings against the property of non-violators.

There is no specific section of the 1923 Act relating to search warrants, and the title of said act makes no specific reference to search warrants.

Section 4 of Chapter 151 S. L. 1919 makes provision for search warrant under certain conditions, whereby liquor may be seized and disposed of as the court may direct. It may be that the legislature deemed this law on the question sufficient, although search warrant, under it, may be issued only after conviction for violation of said Chap. 151.

From the foregoing references and a careful examination of practically all of the law and decisions we could find on the subject, we have come to the conclusion that the provisions of said Chap. 118 do not give the right of search warrant.

We think other reasons exist to sustain the conclusion we have reached, but we think the foregoing discussion is sufficient.