

**Opinion No. 24-3759**

February 26, 1924

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

**TO:** Requested by: Hon. C. M. Compton, District Attorney, Portales, New Mexico.

**Grain Alcohol Only may be Dispensed on Prescription in this State.**

**OPINION**

{\*132} We have your request for an opinion as to whether or not intoxicating liquors may lawfully be dispensed in New Mexico on prescription from a duly authorized physician qualified under the provisions of Title II of the National Prohibition Act.

We are advised that Judge Hatch of the Ninth Judicial District has held constitutional our Prohibition Act found at Chapter 118 of the Session Laws of 1923. Then, conceding this decision to be correct, we conclude that intoxicating liquors, limited to grain alcohol, may be dispensed by a physician within the import of the inquiry.

It seems necessary to limit such sales to "grain alcohol" in view of Article 23 of the New Mexico Constitution. Then, it may be contended that the State Act of 1923, adopting the "penal provisions" of the National Prohibition Act, repeals all provisions of former state laws on that subject, in the matter of penalties, and that there is no penalty against the sale, in accordance with the National Act, of any kind of intoxicating liquors. It may be conceded that the 1923 Act is a general law on the subject and that the repeals effected thereby are far-reaching, but it was probably not the intention of the legislature to nullify the provisions of Chap. 151, S. L. 1919 in so far as the same may be retained to punish for sales of intoxicating liquors other than "grain alcohol." The prohibition intended by the amendment to our State Constitution found at p. 352, S. L. 1917 is broader in scope than that {\*133} contemplated by the National Act, therefore, if it were held that the State Prohibition Act of 1923 was meant and intended thus to modify the provisions of the State Constitution, the 1923 Act would doubtless be unconstitutional. We, therefore, think grain alcohol may be sold on prescription in this state by complying with the National Prohibition Act, but that other intoxicating liquors may not be sold. We think the provisions of said Chapter 151 of the Session Laws of 1919 are still in full force and effect to the extent that same may be necessary to prevent selling, on prescription, liquors other than grain alcohol.