

## Opinion No. 32-408

March 9, 1932

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. Fred C. Stringfellow, District Attorney, Raton, New Mexico.

{\*147} Your letter of March 4, 1932, propounds the following questions:

1. Is there a law prohibiting the holding of a public dance on Sunday where an admission is charged?
2. Is it necessary, that every time a dance is given outside of a town, city or village, for the holder or giver of such dance to secure a license as required in Article 3 of Chapter 81 of the 1929 Compilation?
3. Can the operator of such dance hall be required to keep an officer at said dance for the purpose of preserving order and can such operator be required to pay such officer for performing such duty?

In answer to your first question, will say that, in our opinion, there is no specific statutory prohibition to the holding of dances on Sunday where there is a charge therefor, unless such an act would be considered in violation of Article 40 of Chap. 35 of the 1929 Code, as amended by Chap. 29 of the 1931 Laws, relating to Sabbath observance. Our Supreme Court has liberally construed such law, as is to be observed in the decision in *Davenport vs. Territory*, 17 N.M. 214; *Territory vs. Hart*, 17 N.M. 222 and *State vs. Hardwick*, 1 Pac. (2nd) 974, and, while in the opinion of the writer the holding of dances on Sunday, as described, is clearly in violation of the Sunday Act, a test case is the only method whereby such opinion could be tested.

If Article 3 of Chapter 81, 1929 Code, means anything, the answer to questions 2 and 3 must, in each instance, be "yes". You will note, however, that the laws making up such article are old and can only be applied as to present day conditions as to collection of such fees as therein provided, that is, the money must be collected by the County Treasurer. Also, that if the holder of the dance is not a suitable person to be sworn to act as a police officer during such dance, he must procure a competent person to so be sworn and act or procure the attendance of an officer, the sheriff, his deputies, or a constable, at such dance.

The law in question should be modernized and amended to meet present day conditions, but, in our opinion, such law is in effect at this time as far as the necessity of procuring a license for each day paying \$ 10.00 therefor and providing for the attendance of a suitable officer at such dance is concerned.