

**Opinion No. 34-722**

February 3, 1934

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

**TO:** Mr. C. R. McIntosh, Assistant District Attorney, Gallup, New Mexico.

{\*112} Pursuant to our long distance telephone conversation of last night, and {\*113} at request made by you, I have this morning wired you to the effect that prosecutions for sales of liquors to Indians may be had under the Lane Liquor Law, which is cited as Chapter 159 of the Session Laws of 1933, and this letter is confirmatory of said telegram. And, at your further request, same will be given to the press.

Our former statute upon the sale of intoxicating liquor to Indians was Section 116 of Chapter 72 of the New Mexico Statutes, Annotated, 1929 Compilation and by Section 23 of the Lane Law said Chapter 72 is expressly repealed.

However, Section 2 of the Lane Law provides that the sale of alcoholic liquors is hereby prohibited within the State of New Mexico, except upon the conditions and in the local option districts herein specified. The Act then provides for local option districts and sets forth the various requirements with which dealers in liquor must comply before engaging in the liquor business.

Section 21 of the Lane Law provides that nothing in the Act shall be so construed as to permit, under any circumstances, the sale of alcoholic liquor to any person to whom, by the Constitution or laws of the United States or of New Mexico, it shall be unlawful to sell same.

The Federal Laws, as well as the Constitution of the State of New Mexico, prohibit the sale of intoxicating liquor to Indians and it is our belief, therefore, that where liquor is sold to an Indian in New Mexico it is a violation of the Lane Law and prosecution may be had thereunder.

By: FRANK H. PATTON,

Asst. Attorney General