

**Opinion No. 34-737**

March 8, 1934

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

**TO:** Mr. Ira Pennington, Mayor Clayton, New Mexico.

{\*119} This is in response to your inquiry regarding the issuance of search warrants in cases involving violation of the Lane Liquor Law.

There is no statute now in force authorizing the issuance of a search warrant for the purpose of searching for intoxicating liquor. Such authority, {\*120} if it exists, must be found in Section 10, Article 2 of the New Mexico Constitution or in the common law. Certainly, in my opinion, a Justice of the Peace cannot issue such a warrant, his authority being limited to those powers expressly conferred upon him. *State vs. Kriegbaum (Wis.)* 215 N.W. 896. It may be that a court of general jurisdiction, such as the district court, could issue a search warrant in such cases. This question could be determined by application to the District Court.

It might be well to keep in mind however that in some cases searches can be made without a search warrant.

"Where a reasonable belief or probable cause for believing that an offense is being committed in the presence of an officer will justify an arrest therefor, it will also justify a search incident thereto." 56 C.J. 1204.

"In *McBride vs. U.S. (C. C. A.)* 284 416, federal officers passing along the street smelled the fumes of whiskey and without warrant seized the still located in a building. The court held the crime was committed in their presence, and refused to suppress the evidence." *State vs. McDaniels (one)* 237 P. 373.

Trusting that the above gives you the information desired, I am

By: QUINCY D. ADAMS,

Asst. Attorney General