

Opinion No. 34-723

February 5, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Robert A. Morrow, City Attorney, Raton, New Mexico.

{*113} You have by your telegram of February 3rd requested an opinion as to whether municipalities may pass any regulatory measure governing intoxicating liquors, or whether the State by passage of Chapter 159, Laws of 1933, the Lane Law, has assumed complete jurisdiction.

Section 90-402, sub-section eighteen, New Mexico Statutes Annotated, 1929 Compilation, contains a grant of power to municipalities to license, regulate and prohibit the sale of intoxicating liquors.

Of course, under the present state law, such municipalities have been stripped of the power to license or prohibit. A municipality can only enact such measures as are not in conflict with state law.

Sub-sections nineteen and twenty-nine of said Section 90-402, contemplate strictly regulatory and police measures, and we believe the municipalities have not been divested of this power by the Lane Law.

These Sections are as follows:

"Intoxicating liquors. Eighteenth. To have the right to license, regulate, or prohibit the selling or giving away of any intoxicating, malt, vinous, mixed, or fermented liquor, within the limits of the city or town, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license: Provided, that the city council in cities, or board of trustees in towns, may grant permits to druggists for the sale of liquor for medicinal, mechanical, sacramental, and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance: Provided, further, that in granting licenses, such corporate authorities shall comply with whatever general law of the territory may be in force relative to the granting of license. 'Provided, further, that no city council, or board of trustees in towns, in exercising its right to grant licenses, regulate or prohibit the selling or giving away of any of the liquors mentioned in this section, shall have the power to discriminate between persons of like or similar character engaged {*114} in the same class of business in favor of one as against another nor to discriminate between places, locations or buildings in favor of one as against another, which are situated in the same business district in such city or town; and, Provided, further, that no city council or board of trustees in towns shall grant any license for the sale of liquors on any lot where there is not a saloon in operation at the time of application for such license, except upon petition and written consent of the owners of more than one-half of the lots of the half-

block in which such lot is situated, or if the place described in such application is not part of regularly numbered block, then upon petition or written consent of the owners of more than half of the property in the square or other subdivision in which the same is situated; but no license shall be granted for the sale of liquors within one block or square of any church, public library or public school, nor in any purely residence district.' 'And, Provided further, that the provisions of this act shall not apply to buildings owned, controlled or leased by the association known as 'Young Men's Christian Association'."

"Selling liquor to minors, lunatics, drunkards. Nineteen. And the city council in cities and board of trustees in towns shall also have the power to forbid and punish the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor to any minor or apprentice, insane, idiotic or distracted person, habitual drunkard or person intoxicated."

"Disorderly conduct, etc. Twenty-nine. To prevent intoxication, fighting, quarreling, dog fights, cock fights, and all disorderly conduct."

It is our opinion, under the foregoing, therefore, that municipalities only have the power to enact such measures as are strictly regulatory and which invoke the police power and that the question of license, sale and prohibition is governed by the statute.

We may add that we believe cities, towns or villages may also prohibit in those places where the local option provisions of the Lane Law have not been adopted.

By: FRANK H. PATTON,

Asst. Attorney General