

Opinion No. 34-784

July 9, 1934

BY: E. K. NEUMANN, Attorney General

TO: Honorable E. R. Wright, Attorney at Law, Santa Fe, New Mexico.

{*140} Your letter of July 3, 1934, relating to wholesale liquor dealers' licenses under Chapter 159, Laws of 1933 and Chapter 30, Laws of 1934, is hereby referred to.

The specific questions to which you desire an answer are: What are the rights of a wholesaler who is licensed by a municipality or county? Does such license limit his operations to such municipality or county or can he do business throughout the entire state, excepting of course in dry territory?

This question has been asked a number of times and we have refused to rule thereon, taking the position that it is a question between the licensee and the municipal or county offices. The question has presented itself many times within the past two or three days, showing that it is live and pertinent in every part of the state, consequently we feel required to state our views relating thereto.

As you point out in your letter very few references to wholesale operations, in either Chapter 159, or Chapter 30, appear and those help but little in this matter. You refer to Section 1 (3), Section 6 (B) and Section 11 (B), Chapter 159, I call your attention to the following parts of said Chapter 159, Laws of 1933.

"Section 5 H (1) (in part) Any hotel, restaurant or cafe, licensed under the terms of this Act, may purchase from any wholesaler, retailer or manufacturer in this state, * * *."

As is generally understood, a wholesaler sells goods, wares, merchandise or others for resale. A wholesaler, say of groceries, established a place of business and sells generally to the trade all over the state. His salesmen call upon the trade, take orders, and delivery is made from some warehouse of the wholesaler or from outside the state by shipment directly to the retailer. A liquor wholesaler operates in the same manner.

Nowhere in the Act is there language to indicate that a wholesaler is limited in his operations to any particular territory other than the boundaries of the state. One reading Section 6 and 11 of the 1933 Act would be lead to conclude that the legislature intended to have all wholesalers licensed at some one place in this state. That is my conclusion, and I am of the opinion that a wholesaler can take orders in any local option district, and make deliveries of such orders if such wholesaler is licensed.

If, however, a wholesaler has several offices and warehouses in several local option districts, from which deliveries of liquor are made, {*141} each such place must of necessity be licensed.