

Opinion No. 36-1423

August 22, 1936

BY: FRANK H. PATTON, Attorney General

TO: Mr. William G. Johnson, Chairman, State Board of Liquor Control, Santa Fe, New Mexico.

{*136} We have your letter of August 21st asking our opinion on the following question:

"May a wholesaler who has taken out a New Mexico wholesale liquor license from the State Board of Liquor control in a certain municipality and having paid for said license and the money for same having been distributed to the municipality by the State Treasurer, remove his wholesale business to another municipality and continue under the original license granted by the State Board of Liquor Control, or will it be necessary for him to procure a new license from the State Board and make payment for same?"

You do not state in your question whether or not the municipalities in question are in the same local option district. We believe that this matter would have a bearing upon the question which you ask. Section 703 of Chapter 112, Laws of 1935, provides for the issuance of wholesaler's license to any person eligible to receive the same in any local option district. We believe that under this section a person receiving such license is entitled to operate his business anywhere within the same local option district provided that notice of removal of business is given and approved by the State Board of Liquor Control. If the holder of the license attempts to remove his business outside of the local option district for which it was granted, we believe that a new license would have to be purchased.

We have taken into consideration Section 1102 of said Chapter 112 providing for the distribution of the proceeds from wholesale licenses which provision is that the proceeds therefrom are distributed to the municipality in which the business is operated. We believe that the proper construction of this is that the money is distributed to the municipality in which the business is operated at the time of the granting of the license and in the event the business is moved to another municipality within the same local option district before the expiration of the license, the municipality to which the business is removed would not be entitled to any of the said proceeds.

We call your attention to the fact that this ruling is somewhat arbitrary on the part of this office as there is no specific provision in the law covering the situation about which you inquire but in the absence of any specific provision we believe that the construction hereinabove set forth is reasonable and proper.

By J. R. MODRALL,

Asst. Atty. General