

## Opinion No. 39-3073

March 29, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. S. T. Jernigan, Chief, Division of Liquor Control, Bureau of Revenue, Santa Fe, New Mexico.

{\*29} You state that you believe an opinion has been handed down by the Attorney General stating whether or not it is legal for a wholesaler to load a truck "with beer and other liquors" and to "peddle these from town to town."

We have been unable to find any written opinion upon this question, and at your request have looked into the statutes to determine whether such practice is lawful under Chapter 130, Laws of 1937.

I take it that by the expression "peddle from town to town" you mean selling from the truck to retailers in the various towns, since sales to others than retailers cannot be made by a wholesaler.

{\*30} Section 808 states:

"Salesmen. It shall be unlawful for any person to sell, solicit, offer for sale or take orders at wholesale for alcoholic liquors, except persons representing liquor dealers who have secured a New Mexico Wholesaler's license, \* \* \*."

This is the only section referring to salesmen or to the selling, soliciting, offering for sale or taking orders at wholesale, and it is hard to determine just what the Legislature intended by the language above quoted. This section, read by itself, would seem to indicate that the Legislature did not intend to prohibit the carrying of liquor to supply the trade and the selling and delivery of the same at the same time by salesmen.

The Act by Section 401 prohibits the sale or the possession for the purpose of sale of liquors except upon the terms and conditions specified in the Act. No liquor may be sold anywhere by any person within the jurisdiction of the State, except upon the condition set out in Section 705 of the Act that "every applicant for a license before receiving such license shall file a separate bond and pay the Bureau the following license fees **for each place of business** in the State of New Mexico **from which sales and delivery** of alcoholic liquor is made." This section further states that delivery of beer may be permitted from cold storage plants **located in the vicinity** of the licensee's place of business specified in the license.

With respect to the Federal law it has been ruled by the Federal tax authorities that a sale and delivery from a truck would constitute a separate place of business subject to the stamp tax provided in the Federal Act and which is analogous to our state license

tax. It is my opinion that the same thing would hold true with respect to sales of liquor from a truck under our Act. The very fact that the Legislature thought it necessary to specify that beer could be delivered by permission of the Bureau from a cold storage plant in the vicinity of the place of business specified in the license, indicates that the Legislature did not intend for sale and delivery to be made from any other place except the place of business specified in the license, and that the Legislature itself construed the Act to deny such right of sale and delivery from any other place except by such permission of the Bureau, and then only from a storage plant in the vicinity of the place of business specified in the license.

Under the circumstances it is my opinion that liquor may not be sold by a wholesaler from a truck, but that both sale and delivery to the purchaser must be made from the place of business specified in the license, and that delivery by truck can be made only upon order.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.