Opinion No. 39-3157

May 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.

*{*57}* In your letter of May 26th you inquire whether under the new liquor law, Chapter 236 of the Laws of 1939, counties and municipalities have the right to issue an occupation license limited to the sale of beer or wine at a less price than one for the sale of all classes of alcoholic beverages.

My opinion is that they may do so; and that the sale of whiskey by one having a beer license only, constitutes a violation of said Chapter 236 and subjects the offender to prosecution under the Act.

This is the only logical conclusion when one considers the manner in which the new act was enacted. The 1937 Act clearly stated that "only one class of license covering the sale of all alcoholic liquors shall be issued" by municipalities, and provided for the issuance of licenses by the counties at not less than a specified fee "for sale **of all** alcoholic liquors." Article XI, Chapter 130, Laws of 1937. None others could be issued. That Act was repealed and Chapter 236 was enacted by the 1939 Legislature in its stead.

In this new act the minimum fixed for county licenses, and the words above quoted, were in each instance left out, thereby clearly evincing an intent on the part of the legislature to do away with the prohibition.

The Act says in sub-section (d), Section 707, that the state licenses "shall permit the respective licensees to sell **any or** all classes of alcoholic liquors legally in the State of New Mexico." The municipalities within the municipal limits, and the counties outside such municipal limits, were given the power "to impose an annual non-prohibitive license tax upon the *{*58}* privileges of persons holding state licenses." Article XI, Sections 1102-1104.

What are those **privileges?** They are "To sell **any or** all classes of alcoholic liquors" -- the privilege to sell beer, the privilege to sell wine, the privilege to sell spirituous liquors, and the privilege to sell all. A license tax may be imposed upon each one of those privileges if the sections of the Act above referred to mean what they say.

Furthermore, Section 1105 of the Act declares "This Act shall not be construed as permitting any retailer, dispenser or club to operate in any county or municipality without having paid the municipality or county" the county or municipal license tax.

Read in connection with this provision, as it must be, the word **all** quoted above means "all classes of liquors upon which the county or municipal license tax has been paid." If so, the word **any** likewise means "any class of liquor upon which the county or municipal license tax has been paid." If this language does not mean that the cities may collect the tax on **any** one or more classes without collecting occupation tax on all, then the words "any or," which were added by floor amendment in the senate, are superfluous and redundant.

We cannot accuse the senate of adding words by floor amendment without sense or purpose. The sense of those words is as above given, and the purpose was to bring sub-section (d) of Section 707 into harmony with the apparent intent of the legislature to do away with the 1937 prohibition pointed out above. It avoided an ambiguity between sub-section (d) of Section 707, and the obvious purpose of the legislature otherwise indicated.

One further consideration: Cities, towns and villages already had by general law very broad powers to impose license taxes on any and all occupations. Chapter 145, Laws of 1937 (90-501 and 90-502, 1938 Supplement). This new liquor law is an excellently written Act, carefully prepared, explicit and minute in every detail. Had the legislature intended to limit the powers of the municipalities in this respect, it is to be expected that it would have done so specifically in this Act.

The 1937 Legislature probably thought that issuance of licenses for beer only upon a lower license fee would encourage bootleggers to sell whiskey with a beer license as a blind, and that it would be of advantage to the state in administering the law if that were prohibited. Against this the 1939 Legislature no doubt weighed the equally potent consideration that it is to the advantage of the public for the state not to encourage numerous saloons, and that the lunch stand ought not to be required to compete with the more lucrative saloon business, or refrain from serving beer with lunches. Whatever the reasons, the desire for change is patent.

Since the license given by the state to sell is dependent upon the payment of the county or municipal license tax as to each class of liquor, it follows that the sale of whiskies when a beer or wine license only has been paid the county or municipality would be a violation of the Act itself.

By: A. M. FERNANDEZ,

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