

## Opinion No. 39-3164

June 5, 1939

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

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

{\*58} In your letter of June 2 you request an interpretation of Section 1204 of Chapter 236, Session Laws of 1939, regulating the hours of sale of alcoholic liquors.

You state that some differences of opinion have arisen in some municipalities as to the hours of sale and particularly with reference to sales after midnight Saturday nights.

Section 1204 (a) specifically sets out the hours of sale, and after striking therefrom the portion disapproved by executive action the subsection reads as follows:

"(a) House of Sale, Etc. The licenses of retailers shall allow them to sell and deliver alcoholic liquors, and the licenses of dispensers and clubs shall allow them to sell, serve, deliver and permit the consumption of alcoholic liquors on their licensed premises, only: On Mondays, from and after 7:00 A. M., until midnight; on the other week {\*59} days from and after midnight until 2:00 A. M. and from and after 7:00 A. M. until midnight; and, on Sundays, from and after midnight until 2:00 A. M.:"

A careful reading of the whole of Section 1204 will disclose that it was the original intention of the legislature in the law as passed to permit the sale of alcoholic liquors on week days from 7:00 a. m. until 2:00 a. m. of the following morning, including from 7:00 a. m. Saturday until 2:00 a. m. Sunday.

Under the local option provisions of the section, it might have been possible, upon a vote of the people, to have sold alcoholic liquors on Sunday between the hours of 2:00 p. m. and 1:00 p. m. if the people in any local option district so desired. However, the local option feature of Section 1204 was disapproved by executive action with the end in view of not permitting, under any circumstances, the sale of alcoholic liquors on Sunday from 2:00 p. m. until 11:00 p. m., which otherwise might have been permissible under the Act. That is as far as the executive action went, and if this is so, the hours of sale of alcoholic liquors on week days remains as originally provided in the Act, namely, from 7:00 a. m. until 2:00 a. m. of the following morning, Saturday included, of course.

I presume that a difference of opinion has perhaps arisen as to the meaning of the phrase "and, on Sundays from and after midnight until 2:00 a. m.:". This phrase must of necessity be construed to mean from and after midnight Saturday until 2:00 a. m. Sunday. Technically perhaps, the legislature should have stated "and, on Sundays, from 12:01 a. m. until 2:00 a. m." However, the legislative intent is obvious that sales are to be permitted on Saturday from 7:00 a. m. until 2:00 a. m. of the following morning. The

only other possible construction that might be placed on the phrase here involved would have to be to construe the same to mean "from 2:00 a. m. until midnight Sunday," which would mean sales would stop at midnight Saturday and then start over again in two hours at 2:00 a. m. Sunday and continue all through Sunday until midnight Sunday, which would give us all day Sunday opening which clearly was not the intention of the legislature nor the intention of the executive disapproval.

In view of the foregoing, I repeat that the Act can be construed only one way and that is that it permits the sale of alcoholic liquors only on week days from 7:00 a. m. until 2:00 a. m. of the following morning and prohibits the sale thereof at all other times.

Trusting the foregoing sufficiently answers your inquiry, I am,

By: FRED J. FEDERICI,

Asst. Atty. Gen.