

## Opinion No. 39-3172

June 9, 1939

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

**TO:** Mr. F. S. Merriau, City Attorney, Raton, New Mexico.

{\*62} This will acknowledge receipt of your letter dated June 7 making certain inquiries as to Chapter 236, Session Laws of 1939, being the so-called New Mexico Liquor Control Act.

Ordinarily this office does not give rulings to others than state departments and district attorneys. However, since the matters about which you make inquiry are without doubt of immediate interest to municipalities throughout the state, we will be glad to give you our views and forward a copy of this opinion to the New Mexico Division of Liquor Control.

Your first inquiry is whether or not a municipality in this state will have power to cancel or revoke the license of any licensee within the municipality for violations of ordinance provisions enacted by said municipality under the powers extended them by said Chapter 236.

A careful reading of Sections 302 (d), 702 (c), 801, 802, 1101, 1102, 1103, and 1105 of the Act will disclose that the state, through its Bureau of Revenue and Chief of Division of Liquor Control, is the sole and only licensing authority under the Act. The state and not the municipality issues the license. All the municipality may do, in this respect, is to require the payment of an annual non-prohibitive municipal license tax in the nature of an occupation tax for the privilege of the licensee to operate within the municipality under his state license. The licensee obtains his right to sell alcoholic liquors not by virtue of any municipal license, but rather by virtue of a state license plus the payment or tender to the municipality of the municipal license or occupation tax, according to the terms of the municipal ordinance imposing the same.

If this is so, the municipality issues no license and therefore can cancel or revoke no license, and the state license may be revoked only by the state through the Chief of the Division under authority of Section 302 (g). This does not necessarily mean, however, that the municipality may not enact or adopt penal ordinances subjecting the licensee to fines and imprisonment in the municipal jail for violations of municipal ordinances which are not inconsistent with the State Liquor Control Act.

In view, therefore, of the legislative intent expressed in the Act as aforesaid, we must of necessity answer your first inquiry in the negative.

Your second inquiry is in effect whether or not a municipality may require a bond {\*63} to the municipality as a condition precedent to the issuance of the license.

If what has just been said above with reference to cancellations and revocations of licenses is correct, it follows that if the state, and not the municipality, is the licensing authority, then the state and not the municipality may require bond as a condition precedent to the issuance of the license. Specific provision therefor is found in Section 702 (b) of the Act which requires the applicant for state license to furnish a bond in the sum of \$ 1,000.00, conditioned for the payment of all penalties which may be incurred under the provisions of the Act, the form and nature of the surety of such bond to be prescribed by regulations by the Chief of the Division of Liquor Control.

This is the only provision found in the Act requiring bond. The Act does, under Section 1103, permit municipalities to collect the payment of the annual license or occupation tax in installments and ordinarily it might be said that in such cases the municipality might require a bond from the licensee to secure the payment of this annual tax. However, Section 1103 expressly prohibits municipalities even in such cases from requiring bonds, said section providing that "no bond shall be required to secure the payment of the deferred installments, but that the remedy for the collection thereof shall be that provided in Section 1105 of this Act."

In view again of the legislative intent expressed in the Act as aforesaid, we must necessarily answer your second inquiry also in the negative.

By: FRED J. FEDERICI,

Asst. Atty. Gen.