

**Opinion No. 43-4430**

December 29, 1943

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. J. O. Gallegos, Commissioner of Revenue, Santa Fe, New Mexico. Attention: Victor Salazar, Chief, Division of Liquor Control

I have your letter of this date, wherein you request an opinion of this office concerning a matter that has arisen under Section 61-518 of the New Mexico 1941 Compilation (Laws of 1939, Chapter 236, Section 705), which section provides:

"Every applicant for a license, before receiving such license, shall file a separate bond with, and pay to, the division, the following designated license fee for each place of business in the State of New Mexico from which sales and deliveries of alcoholic liquor are made; \* \* \*

"(e) Wholesaler's license to sell all alcoholic liquors for resale only, \$ 850.00 \* \* \*

"(g) Wholesaler's license to sell spirituous liquors for resale only, \$ 500.00 \* \* \*

"(h) Wholesaler's license to sell beer and wine for resale only, \$ 540.00 \* \* \*."

You state that a given licensee has acquired a license under subsection (h), and is now desirous of obtaining a license to sell spirituous liquors which, in effect, would license him to sell all alcoholic liquors under subsection (e). The question you raise is whether or not he may pay an additional \$ 400.00 and obtain a license under subsection (e), or whether he should pay \$ 500.00 under subsection (g), which would cause him to pay \$ 950.00 for obtaining a license to sell the same liquors that he could have originally acquired under subsection (e) for \$ 850.00.

Section 61-519 of the New Mexico 1941 Compilation provides:

"All licenses provided for in section 705 (section 61-518) shall be issued by the chief of division in **strict compliance** with the provisions of this act, and license fees, at the rates therein provided, shall be collected by the chief of division and immediately shall be remitted to the state treasurer. \* \* \*"

With this provision in mind, we will construe Section 61-518. It is noted that there is no provision for cancelling a license or returning the amount paid therefor; nor is there any provision which would allow a person to apply an amount paid on one license to a different license. Three separate types of licenses are involved in the above subsection, and these licenses are not interchangeable. Therefore, if the particular licensee wishes to sell spirituous liquors, he will have to obtain a license under subsection (g), and pay \$ 500.00 for it.

There is no authorization under the law for the Director of the Liquor Division to cancel the license issued under subsection (h) and apply the amount spent on such license to the license required in subsection (e). If a license required under subsection (e) is desired, \$ 850.00 will have to be paid for it, irrespective of how many other licenses the particular licensee may hold.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Assistant Attorney General