

Opinion No. 44-4462

February 18, 1944

BY: EDWARD P. CHASE, Attorney General

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

In your letter dated February 16, 1944, you ask the following questions:

"Will you please tell me is the husband of a minor girl her legal guardian, That is, may a minor girl, accompanied by her husband, be served alcoholic drinks,"

Your question involves two separate questions; first, whether the husband of a minor girl is her legal guardian. Section 35-141 of the 1941 Compilation provides as follows:

"The guardianship over men and women shall cease with their marriage."

The Supreme Court of this state has held, on two occasions, that this statute refers only to the guardianship of the person and not of the property. *Montoya de Antonio v. Miller*, 7 N.M. 289, 34 P. 40, 21 L.R.A. 699. *In re Hays' Guardianship*, 37 N.M. 55, 17 P. (2d) 943.

Since all guardianship of a person ceases upon marriage and the Supreme Court has stated, in the early case cited above, that "guardianship of the person is absolutely inconsistent with the conjugal rights of husband and wife", it is apparent that the husband is not the legal guardian of his minor wife.

The next question to be answered is whether a minor girl accompanied by her husband may be drinks?"

Section 61-1012 of the 1941 Compilation prohibits the sale, service or delivery by any person or the purchase by a minor of alcoholic liquors, except when the minor is accompanied by, and in the visible personal presence of a parent of such minor child, guardian or the adult person into whose custody any court or the parents or guardian of such minor has committed such minor for the time. No violation of this law occurs if the minor is accompanied by any adult person into whose custody said minor is committed by the parent **for the time**. The words "for the time" may mean for one evening or for any extended length of time, and it is necessary that the parents must have given permission to such adult person to have the custody of the minor for the time involved.

Although a husband is not the legal guardian of his wife, who may be a female minor, yet he may be an adult person into whose custody the wife is committed. Since the words "for the time" are used it is apparent that the word "custody" is used in a very loose manner and may mean nothing more than being accompanied by an adult

person. Under our law the husband is the head of the family, and although he is not the guardian of the wife, yet he is charged with the care and protection of the wife's person, and stands in a relationship to the wife with respect to responsibility for her care and custody, which is much stronger than the position of an adult person into whose care and custody she may be placed by her parents or guardian for the time.

In view of these reasons my opinion is that if the husband is an adult person, the consent of the parents or guardian to the marriage by a minor girl has been given, either expressly or impliedly, to the husband, for the care and custody of his minor wife, during such time as the marriage shall exist. Under these circumstances, when a minor wife is accompanied by her adult husband, alcoholic liquors may legally be served to the minor wife.

By C. C. McCULLOH,

First Asst. Atty General