

Opinion No. 44-4621

December 5, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Victor Salazar, Chief, Division of Liquor Control, Bureau of Revenue, Santa Fe, New Mexico

We are in receipt of your letter of December 4, 1944, in which you ask whether a municipality has authority to pass an ordinance defining the hours of sale of liquor in variance with the hours provided by Section 61-1014 of the N.M. 1941 Compilation.

You will observe that this section provides, in part, that:

"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: * * *."

and then provides for the hours of sale. The language of this section appears to be the grant, by the Legislature, of particular rights to licensees, which rights could not be taken from them unless authorized by statute.

Section 61-401 authorizes municipalities to regulate the sale of alcoholic liquors, but only after local option has been adopted. Thus, it is apparent that the Legislature did not intend to grant municipalities the power to regulate the sale of liquor in any manner. This must necessarily be so, since if municipalities could regulate the hours of sale by shortening the time of sale to one hour they could, in fact, prohibit the sale of alcoholic liquors.

In view of the foregoing, it is my opinion that municipalities have no power to establish hours of sale different from that set forth in Section 61-1014.

By ROBERT W. WARD,

Asst. Atty. General