

## Opinion No. 45-4632

January 9, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. J. B. Mitchell, Director Driver's License Division Bureau of Revenue Santa Fe, New Mexico

{\*2} We are in receipt of your letter of January 8, 1945, in which you state that the City Clerk of a City has {\*3} advised you that his office would sell drivers' licenses only from the hours of 9:00 A. M. to 10:00 A. M., and from 1:00 P. M. to 2:00 P. M. daily. In view of this situation, you ask our opinion as to whether or not the department is required to distribute the 40% of the fees received from persons granted licenses residing in that city.

Your attention is directed to Section 68-308 (d) of the N.M. 1941 Compilation, which provides as follows:

"The Department shall distribute to each incorporated municipality an amount equal to forty per centum (40%) of the fee received from each and every applicant to whom license is granted and who resides within such municipality, **Provided, however, that the clerk in each such municipality shall be required to receive applications for licenses**, to collect the proper fees thereof, and to remit the same monthly to the Department, if the Department may require, and that no part of the forty per centum (40%) shall be distributed to any municipality in which the clerk refuses to perform the duties herein required **without additional cost to any applicant or to the Department.**"

Such hours of sale as proposed to be set up by the City mentioned are certainly unreasonable in that many persons could not make application for licenses during such limited hours.

If a municipality can refuse to sell drivers' licenses except between the hours of 9:00 and 10:00 A. M., and 1:00 and 2:00 P. M., without losing its right to the 40% of the fees, then it could refuse to sell drivers' licenses except between the hours of 9:00 A. M. and 9:05 A. M., and between the hours of 1:00 P. M. and 1:05 P. M., or could refuse to sell except when the applicant found the Clerk at his home.

Such a construction would lead to an absurdity, and certainly was not contemplated by the Legislature, since the Legislature requires the City Clerk to "receive applications for licenses." If the Clerk limits the hours of sale, or the place of sale, the Clerk would not be receiving applications for licenses, but would merely be making a pretense of receiving them. Thus it is apparent that by the use of the words "receive applications for licenses" the Legislature meant at reasonable times and places which would, of course, be during the office hours at the office of the Clerk.

Further, if the City unreasonably limits the hours of sale, it would place an additional cost on the department, since the department would have to make other provisions to handle the sale of licenses for such municipality. This, in itself, is a sufficient ground to authorize the department to refuse to distribute the 40%.

In view of the foregoing it is my opinion that the department may refuse to distribute the 40% to a City which does not accept applications for driver's licenses during the usual office hours of the City Clerk.

By ROBERT W. WARD,

Asst. Atty. General