

## Opinion No. 46-4837

January 15, 1946

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

**TO:** Harry E. Shuart Chief Division of Liquor Control Bureau of Revenue Santa Fe, New Mexico

{\*173} In your letter dated January 10, 1946 you refer to Section 61-524 of the 1941 Compilation and state that there is some confusion in the minds of county commissioners regarding the construction of this act. You further state that you have previously held that the entire property is a part of the school or church and the law does not intend you to issue a liquor license to an establishment within 300 feet of such property. This section provides as follows:

"No license for the sale of alcoholic liquors at a location, where alcoholic liquors are not already being sold, which is within 300 feet of any church or school shall be granted by the division unless such application is accompanied by a resolution duly adopted by the municipal council or board of county commissioners approving of and consenting to the granting of a license to sell liquor at such location."

In the case entitled *In re Brady*, 106 N. Y. S. 921, the court stated that there should be a liberal construction in favor of institutions such as schools and churches which are permitted by statute to be a certain distance away from a liquor establishment. And in the case entitled *U. S. ex rel Sheehy against Johnson*, 12 App. D. C. 92, in connection with such statutes, it is stated that the danger against which it is sought to guard is not so much the gratification of the passion for drink as the scandal of evil example and the public exposure of human weakness.

In *Dougherty against Kentucky Alcoholic Beverage Control Board*, 130 S. W. 2d 756, 279 Ky. 262, this language is used:

"Except as may be otherwise specifically provided, it is uniformly held that the distance contemplated by a statute or regulation prohibiting the granting of a license for the sale of intoxicating liquor within a distance of a named institution or place, such as a church or school, must be measured in a straight line from and to the nearest points of the respective properties rather than in some other manner such as by the usual travelled route or straight line. Note 96 A. L. R. 778."

See also in *re Clement*, 125 App. Div. 676, 110 N. Y. S. 57, and *Board of Trustees of Leland Stanford Jr. University against State Board of Equalizations*, 37 P. 2d 84, 1 Cal. 2d 784, 96 A. L. R. 775.

In view of these authorities, I am of the opinion that your previous decision regarding the matter is correct and that a license for a liquor establishment should not be granted if

the liquor establishment is within 300 feet of the boundary of the school or church premises, without the approval of the local authorities.