

**Opinion No. 54-5937**

April 5, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Charles D. Alsup Assistant District Attorney Clayton, New Mexico

{\*386} Receipt is acknowledged of your letter dated February 10th, 1954, in which you request an opinion as to whether or not a municipality can prohibit the giving of a public dance on Sunday. According to your letter the Board of Trustees of the Town of Clayton have passed an ordinance prohibiting and making it unlawful for any person, corporation, firm or organization to give, conduct, or participate in the giving of a public dance on Sunday, and you would like to know whether or not this ordinance is valid.

I think that the intention of the Legislature is clear in that cities and towns have the authority to license, regulate and prohibit the giving or holding of dances on Sunday.

Section 14-1818 of the New Mexico Statutes Annotated, 1941 Compilation, reads as follows:

"Amusement places -- Licensing -- Regulating -- Prohibiting. -- To license, regulate or prohibit places of amusement.

Section 14-3808, N.M.S.A., 1941 Compilation, among several other enterprises which the governing bodies of towns, cities, and villages can license and regulate, are public dances and dance halls.

Section 14-3809, N.M.S.A., 1941 Compilation, reads as follows:

"Right to deny license -- Hearing -- Result. -- The legislative or governing bodies of cities, towns and villages may for the purpose of regulation, refuse to issue licenses when it may deem it for the best interest of the public; Provided, however that no license shall be refused without first giving the person, firm, or corporation so applying therefor an opportunity to be heard. If, upon such hearing before the governing body of such city, town or village, a majority of such governing body present at such hearing be of the opinion that it be for the best interest of the public, such license may be refused.

**Volume 43 of CJ** at page 363, Section 322 is found the following:

"Public dances and dance halls may be proper subjects for regulation by municipal corporations sometimes under express authority conferred by the legislature and such regulations are regarded as proper exercise of the police power. In the exercise of the power municipal corporations may require that dance halls be run by persons of good character; may regulate and prescribe the age of persons there attending; may forbid the sale of liquor in dance halls; may forbid dancing on Sunday; and within reasonable

limits may regulate or prescribe the opening and closing hours of dance halls. **McQuillin on Municipal Corporations**, Volume 7 at page 37 in the middle of Section 24.212, states as follows:

Hours of closing of dance halls and schools may be regulated. Also, dancing and dance halls frequently have been subjected to 'Sunday' ordinances and regulations.

In **60 ALR at page 175**, the following annotation appears:

"The courts, in a few recent cases, have declared their adherence to the doctrine that, by reason of their inherent capacity {*\*387*} for evil, public dance halls may be entirely prohibited or suppressed, in the proper exercise of the police power, *Dwyer v. People* (1927) 82 Colo. 574, 261 Pac. 858; *Bungalow Amusement Co. v. Seattle*, (reported herewith) Ante. 166. See Also 48 ALR p. 177, Section 11.

In the case of **Conley vs. City of Buffalo**, reported in 119 N.Y.S. at page 87, where one of the defendants, a policeman, called on plaintiff at his dancing school, requested to see his city license, and on being informed that he had none, told plaintiff to go to the mayor's office and procure a license, for which he paid \$ 25. Plaintiff was not told that he must stop running the school, or he would be arrested, unless he procured a license; nor was anything said as to the consequences of his failure to obtain it. Plaintiff went to the mayor's office, procured a license, and paid \$ 25. for it. In 1907 these conversations were repeated, and a second license was procured by payment of a like sum. It is now urged that the city ordinance requiring such a license is void, and that consequently such payments were made under compulsion, to prevent interference with, or destruction of, plaintiff's business, and injury to his property rights.

In holding the license valid, the Court stated:

"If the common council and mayor deemed it expedient for the preservation of health, peace, and good order, and the suppression of vice, that a public dancing school should not be conducted, except by a person of good character in a designated building in which no intoxicating liquors were sold, that no girl under 16 years of age should be admitted thereto unless accompanied by her parent or guardian that no dancing should be permitted on Sunday, or on any other day after eleven o'clock in the evening, and requiring a license to be taken out for such a business it is inconceivable why an ordinance providing for such regulation of such a business was not clearly within the authority granted by the legislature.

The same reason was given in the case of **Geyer vs. Buck, Mayor et al.**, reported in 175 N.Y.S. at page 612, for holding a municipal ordinance valid which required that dance halls should be run by persons of good character, forbidding sale of liquor therein, regulating the age of attendants, forbidding Sunday dancing, and requiring a license, was valid.

See also the case of **Stetzer vs. Chippewa County et al.**, reported in 273 Northwestern Reporter, at page 525.

In view of the above and foregoing statutes and authorities it is the opinion of this office that the municipality of Clayton has the authority to prohibit the giving of a public dance on Sunday and that their ordinance prohibiting of the giving of public dances on Sunday is valid.

Trusting that this fully answers your inquiry, I remain

By: Hilario Rubio

Assist. Attorney General