

Opinion No. 55-6105

February 16, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Claude S. Sena, Assistant District Attorney, First Judicial District, Santa Fe County Court House, Santa Fe, New Mexico

You have requested the opinion of this office relative to whether or not minors may be permitted to entertain in night clubs. In the factual situation presented in your request, the father of the minor children accompanies them and consents to their employment.

I am assuming that these children are over the age of sixteen years since they would be prohibited from this type of employment by § 59-6-5, N.M.S.A., 1953, if under the age of sixteen years.

Your request requires an interpretation of §§ 40-10-5, 46-10-12 and 46-10-17, N.M.S.A., 1953. While § 40-10-5 makes it unlawful for the proprietor of a saloon to permit minors to loiter upon or frequent his premises, it is necessary to construe this section of our statute together with § 46-10-12. Said section prohibits the sale, service, gift or delivery by any person or the purchase by a minor of alcoholic liquor except (subsection b) when accompanied by his parent, guardian, spouse or an adult person into whose custody he has been committed for the time by some court, and who is actually, visibly and personally present at the time such alcoholic liquor is bought or received by him, or served or delivered to him. This section has been construed by this office in Attorney General's Opinion No. 4462, dated February 18, 1944, to mean that if one spouse is an adult person then the minor spouse when in company with the adult spouse may be legally sold alcoholic beverages. It would logically follow that the same would be true if a minor were accompanied by his parent or guardian, either natural or court appointed.

Taking the above premise, it follows that if a minor may be served liquor under the specified circumstances, the Legislature intended that the minor might be on the premises where alcoholic liquors are sold under the same circumstances.

Further, under § 46-10-17, there is no expressed prohibition against minors entertaining on the premises of a night club or location in which alcoholic beverages are served.

It is therefore the opinion of this office that provided the minor is over sixteen years of age, he may be employed as an entertainer in a night club provided he is accompanied by an adult who is his parent, guardian, spouse or an adult person in whose custody he has been committed at the time by some court.

Hoping that this has been of service to you, we remain

By: J. A. Smith

Assistant Attorney General