

## Opinion No. 55-6278

September 7, 1955

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

**TO:** Hilton A. Dickson, Jr., Chief, Division of Liquor Control, Bureau of Revenue, P. O. Box 1540, Santa Fe, New Mexico

We have your letter of August 30 in which you requested an opinion from this office on the following questions:

1. May alcoholic beverages be sold, served or consumed on the premises of a bowling alley in view of Chapter 112, Laws of 1955?
2. May a bowling alley licensee allow minors on the premises in view of Regulation No. 32?
3. Is the exception granted to restaurants and cafes by your office under Regulation 32, in that such establishments are permitted to allow minors to enter and remain on the licensed premises, discriminatory and arbitrary?

We shall answer the questions in the order above given.

1. Chapter 112, Laws of 1955, reads as follows:

". . . It shall be unlawful to drink or consume alcoholic liquors, or for any person who is the owner or proprietor to sell, serve, furnish or permit the drinking or consumption of alcoholic liquors in any public dance hall, pool room, bowling alley, street, state or federal building, or in any other public place except establishments having a license to dispense alcoholic liquors . . ."

It is the opinion of this office that the Legislature intended that all places selling, serving or dispensing alcoholic beverages had to secure a license. The Legislature did not intend to set up a class of establishments which could not be licensed in any case. In effect, the Legislature stated, the selling, serving or dispensing of alcoholic beverages is prohibited in any public place unless a license is first secured. It is to be noted that this provision was a part of Chapter 236, Laws of 1939. In Chapter 80, Section 5, Laws of 1941, the particular provision with which we are here concerned was re-enacted. Chapter 112, Laws of 1955, re-enacted also this same provision when additions were made to this section. We must assume that the Legislature was aware of the executive construction that has been placed on this section during the past years. Certainly the Legislature was aware that licenses have been granted to establishments named in this section, such as dance halls, etc. If the Legislature had not intended such construction, it would surely have changed the wording of this section; however, as pointed out

above, the Legislature has on two occasions re-enacted the same statute with identical wording. See 82 C.J.S. (Statutes), Section 370, page 854.

It is, therefore, our opinion that there is no prohibition against issuing an alcoholic beverage license to a bowling alley, thus permitting the serving of liquor on the premises.

2. It seems to this office that in view of your Regulation 32, which reads as follows:

"It shall be a violation of this regulation for a dispenser's or retailer's licensee to permit minors to enter and remain on the licensed premises without a legal guardian."

that minors could not be allowed in the bowling alley if there is an alcoholic beverage license without the legal guardian being with the minor. Certainly the operator of the bowling alley would be required to comply with the Regulations of your Division if the license is issued. We find nothing in the Regulation which would exempt a bowling alley from compliance.

3. The real question in this case is whether your exception is reasonable in view of all the circumstances. It appears to this office that the exception granted to restaurants and cafes with regard to Regulation 32 is reasonable. It seems that the distinction can be made on the basis of one being an eating establishment while the others are places of entertainment. This is a reasonable classification upon which the distinction can be made so that the exception is not discriminatory and arbitrary. The only requirement of the law is that there is a reasonable classification. Therefore, we are of the opinion that the exception which you grant to cafes and restaurants is not arbitrary or discriminatory.