

Opinion No. 57-243

September 26, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Neil Haight, Assistant District Attorney, 729 East Main, Farmington, New
Mexico

QUESTION

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Is it lawful for a dispenser or retailer, as defined by § 46-1-1, N.M.S.A., 1953
Compilation to sell to one purchaser at the time of a single purchase a total quantity of
alcoholic liquor greater than five gallons, although such quantity may consist of several
cases of wine, whiskey, or beer, each of which cases shall contain less than five
gallons?

CONCLUSION

Yes.

OPINION

ANALYSIS

A retailer is defined by § 46-1-1 as follows:

"The term 'retailer' shall mean any person selling, offering for sale, or having in his
possession with the intent to sell, any alcoholic liquors for consumption off of the
premises of the licensee and in unbroken packages containing less than five gallons."

and likewise § 46-1-1 provides that a dispenser is defined as:

"The term 'dispenser' shall mean any person selling, offering for sale, or having in his
possession with intent to sell, alcoholic liquors by the drink or in packages containing
less than five gallons."

The question here considered calls for an interpretation of that language pertaining to
the stated package volumes.

Looking to the provisions of the alcoholic beverage laws as being *pari materia*, we find
aid in referring to other sections as came into existence along with the aforementioned

definitions in 1939. Specifically, § 46-10-9 (d) provides that it shall be a violation for any retailer:

"To sell, possess for the purpose of sale, or to have, possess or keep on his licensed premises, liquors not contained in the unopened, original, immediate containers as packed and filled by the manufacturer, rectifier or bottler thereof; or to sell, offer for sale or suffer or permit upon his licensed premises, any alcoholic liquors the containers or cases of which do not bear the New Mexico excise tax stamps as required by this act; or to receive, have, possess, keep or allow, suffer or permit upon his licensed premises **any package or container** of alcoholic liquor which does not contain less than five gallons; or to buy or receive any alcoholic liquor for the purpose of, or with the intent of, reselling the same, from any person other than a duly licensed New Mexico wholesaler or winer." (Emphasis supplied)

A similar restriction existed in the case of dispensers prior to the 1941 amendment, § 46-10-10.

As will be noted from the last two referenced sections, the term "package" is used as having the same or equal meaning with that of container. A further clarification and meaning of the term "package", as first above used, is found by referring to § 46-7-7, which is stated as follows:

"Every wholesaler who holds for sale any alcoholic liquors heretofore defined, shall, before sale or other disposition, affix stamps of proper denomination at the rate specified in section 902 (46-7-2) to the **immediate containers**, of such alcoholic liquors, except for beer in bottles or cans in closed cases or cartons, stamps need not be affixed to each bottle or can but shall be affixed to each case or carton." (Emphasis supplied)

Here we find that the container contemplated for sale and delivery to the consumer is the immediate container of alcoholic beverage.

In keeping with the usages expressed by and implied from the term "package", it is our opinion that such refers to the individual bottles, cans, or crocks, as the case may be. Accordingly, it is our further opinion that sales may be made to individuals in actual volumes of more than five gallons alcoholic liquors, as long as no individual pack or container measures more than five volumetric gallons.

Also, by the proviso, as found in § 46-10-10, the aforesaid limitation is not applicable to beer as may be sold for parties, outings and picnics.