

Opinion No. 57-324

December 17, 1957

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

TO: Honorable Dan Sosa, Jr., District Attorney, Third Judicial District, Las Cruces, New
Mexico

QUESTION

QUESTION

"With reference to Section 46-10-17, N.M.S.A., 1953 Compilation, would a retailer or dispenser of alcoholic beverages operating a bar be in violation of the law if he employs minors to perform in a dance band on the premises, where such minors have the written consent of their parents?"

CONCLUSION

Yes.

OPINION

ANALYSIS

The operation of licensed premises with regard to persons who have not attained their twenty-first birthday is governed by §§ 46-10-12 and 46-10-17, N.M.S.A., 1953 Compilation and Division of Liquor Control Regulation No. 32, duly promulgated and filed May 24, 1954. Answer to your inquiry is found in the latter two of the aforesaid references.

Section 46-10-17 specifically provides that:

"It shall be a violation of this act for any retailer or dispenser knowingly to employ any person under the age of twenty-one (21) years in the sale and service of alcoholic liquors."

While some question may arise in the construction of this statute it is our opinion that the 'sale and service of alcoholic liquors' is not to be restricted in meaning to the actual, physical handling or soliciting sales of such beverages by minors as defined. (§ 46-10-12 (e)). The employment of musicians on the premises of a retail or dispensary licensee is occasioned only in an effort to encourage patronage and the sale of intoxicants. The display of talents in the instant case is but an adjunct to all other means of selling alcoholic liquors.

In keeping with the authorities found in §§ 46-2-3 and 46-2-4 (g), to promulgate regulations necessary to effectuate the provisions of the liquor code, Regulations No. 32, supra, provides that:

"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."

Accordingly, it is our opinion that a minor may not be employed on the premises of a licensed retailer or dispenser to perform in a dance band, unless such minor is accompanied at all times by a parent or duly appointed guardian.