

Opinion No. 58-151

July 22, 1958

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

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

QUESTION

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"The American Legion Hall of Hatch, New Mexico, has a dance hall and a bar in two different adjoining rooms. Could a public dance, in which minors under the age of 21 are present, be held and compliance still be had according to the law under Section 40-10-5, 1953 NMSA Compilation, if the door between the two rooms is barred and locked? The premises are owned by the same barroom keeper and the question will entail whether the separation of the rooms could be sufficient to allow minors to frequent the dance hall."

CONCLUSION

Yes.

OPINION

ANALYSIS

The statute cited in the question above put specifically provides that:

"It shall be unlawful for any proprietor, keeper or manager of any saloon where intoxicating liquor is kept or offered for sale, or where gambling in any form is carried on or permitted, to permit any minor under the age of twenty-one (21) years or any pupil in any school or educational institution, to loiter upon or frequent the premises belonging to such saloon, or to engage in games or amusements of any kind thereon".

Under this law, there is an absolute prohibition against the frequenting and loitering of any minor upon premises used for the sale and consumption of alcoholic beverages. The determination of what is a "licensed premises" as is of interest in liquor licensing cases is generally governed by the facts of keeping, selling and permitting consumption of beverages within certain confines or rooms. Further, it is generally held that licensed premises are to be identified by the description of a building, a stated street address, or lot description. Depending upon the nature of the immediate area, a licensed premise may be restricted to a specific room of a building, include an entire structure. or be confined only by a specific area designated. From the facts, as accompanied your

aforestated question, and from the location found as a matter of record in the "Official List of Licensed Liquor Dealers", as issued by the New Mexico Bureau of Revenue, it is assumed that the licensed premises here to be considered include the entire structure or building designated as The American Legion Hall of Hatch, New Mexico.

By Regulation 32, as duly promulgated by the Chief of the Division of Liquor Control and filed in the office of the State Librarian the 24th day of May, 1954, there is provided 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 would appear that if the entire structure as comprises The American Legion Hall of Hatch constitutes the licensed premises, then it must follow that no person, except in accordance with the provisions of § 46-10-12, shall be permitted to come upon and remain in said premises for any purpose. However, a search of the provisions of our criminal law, as well as those provided by the Alcoholic Beverage Code, does not reveal any prohibition by which a proprietor, manager or licensee may not restrict the actual area, rooms or portion or portions of buildings which have been licensed for the sale and service of alcoholic beverages. It thus follows that if, as a matter of fact, intoxicating liquors are not kept or offered for sale in any particular room of a building that the provisions of § 40-10-5 do not apply. Also, as suggested from the facts and question above stated, if a room in The American Legion Hall is not used for the sale of intoxicants, and of greater importance, no intoxicants are permitted to be used by any one in such room then it is our opinion that such portion of a building, although entirely licensed for the sale of intoxicating beverages, may be frequented by minors without violating the authorities herein considered.

It is our opinion that Regulation 32, supra, has been duly promulgated in keeping with the provisions of § 46-10-12 and that the intended purpose of this section and said regulation is that of prohibiting the use of intoxicating beverages by minors and to prohibit minors from frequenting environments accustomed to such use, except when such minors are in the presence of their parents or guardians. Accordingly, the portion of a building in which is permitted neither sale nor consumption of beverages is not such an environment or atmosphere contemplated by the law, and therefore, would not be restricted to use by adults.

It should be pointed out, however, that the use by minors for the purposes of a public dance of the herein considered segregated part of The American Legion Hall must at all times during such use be kept entirely free from alcoholic beverages and that such restriction includes not only sales and services but the permitting of beverages to be carried into the hall by any one regardless of the source or place of original purchase.