

Opinion No. 63-172

December 30, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Howard E. Babcock, Jr., Director Division of Liquor Control Bureau of Revenue
Santa Fe, New Mexico

QUESTION

FACTS

In a shopping center owned by an organization, all of the separate stores are connected in such a manner as to compose one building. At one end of the center there is presently in operation a business which is licensed to sell alcoholic beverages. An owner of a liquor license wants to transfer his license to a store which will be located in the other end of the shopping center, some three hundred feet away from the first licensed premises.

QUESTION

Under the facts posed may the Liquor Division approve the second license owner's application for transfer?

CONCLUSION

No.

OPINION

{*397} ANALYSIS

N.M.S.A., 46-5-16.2 (Chapter 260, Laws of 1936) provides:

"The chief of division of liquor control shall not issue more {*398} than one (1) retailer or dispenser license for any one premises or adjacent premises, under one ownership, nor permit the transfer of any additional retailer or dispenser license to any one (1) premises or adjacent premises, under one ownership, whether the application for such additional license or transfer of such existing license be in the name of the existing licensee or in the name of any other person. Nothing in this section shall be construed to limit or forbid the sales or service of alcoholic beverages by existing licensees on one (1) premises or adjacent premises, in existing locations for the sale or service of alcoholic beverages."

Thus it appears that if under the facts stated above the license transfer will result in two licenses on the same or adjacent premises under the same ownership the Chief of the Division of Liquor Control may not allow the transfer.

Although the word "premises" is used numerous times in the chapter on Alcoholic Beverages, it is not defined by statute. Liquor Regulation No. 124 requires an applicant for a liquor license to clearly designate in his application the limits of the proposed licensed "premises". We believe that the area described in this application which has been approved by the local governing body and the Chief of the Division of Liquor Control constitutes the licensed premises of the person holding a liquor license. See **People ex rel Chambers v. Schults**, 149 N.Y.S. 913.

Black's Law Dictionary defines "adjacent" as meaning, "lying near or close to; sometimes contiguous, neighboring. . . . Adjacent implies that the two objects are not widely separated, though they may not actually touch." Therefore, although two stores may be separated by some distance, if the stores are a part of one structure, they may be considered as being adjacent.

We believe, therefore, that if the stores in question are a part of one building which is under one ownership the allowance of the transfer of a second license will result in more than one license on adjacent premises. The Chief of the Division of Liquor Control may not approve a transfer of the second license.

The holding of this opinion must be limited to the facts presented. If the premises are not adjacent, or if the premises are adjacent but are under separate ownership, we would, of course, be forced to reach the opposite conclusion from the one reached herein.

By: Joel M. Carson

Assistant Attorney General