

## **Opinion No. 64-39**

April 1, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Wayne C. Wolf, Assistant Attorney General

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

### **QUESTION**

#### STATEMENT OF FACTS

Section 46-5-15(B), N.M.S.A. (Supp. 1963) in part provides certain requirements for the transfer or assignment of liquor licenses. That section insofar as pertinent to this inquiry reads as follows:

"Licenses are assignable and transferable to persons who are found by the chief of division to have the qualifications to receive licenses in the first instance, and whose application for transfer and approval of assignment have been approved by the chief of division in writing. \* \* \* The transfer or assignment shall not be approved until the chief of division is satisfied that all creditors of the licensee in connection with the operation of the business have been paid or that satisfactory arrangements have been made between the licensee and the creditor for the payment of such debts."

#### QUESTIONS

1. Is the operation of Section 46-5-15 (B) (Supp. 1963), affected by the fact that the licensee may have incurred debts prior to the effective date of the statute?
2. If a person owns more than one license, must a transfer be withheld until all debts of the person in connection with all licenses are paid?

#### CONCLUSIONS

1. No, it applies to all debts in connection with the license and incurred before the transfer.
2. No, only until all debts in connection with the license being transferred are paid or until satisfactory arrangements for their payment has been made.

### **OPINION**

#### ANALYSIS

Your first question raises the problem of whether or not the statute in question applies to debts incurred prior to the effective date of the statute. Section 46-5-15 (B) effects transfers or assignments attempted after the effective date of the act. For its operation the statute may depend on the existence of debts incurred before its effective date. In our opinion, the operation of the statute in this manner is not retroactive in operation, and even if it were, retroactivity does not in and of itself render a statute invalid. We see no restriction that would depend on whether or not a debt was incurred before the effective date of the statute.

Your second question concerns the transfer of a license by a person owning other licenses and owing debts in connection with those additional licenses. The statute refers to debts of the licensed business. The statute does not refer to all debts of the licensee or even debts of the licensee in connection with other licenses. A reference to all debts of the licensee would ignore the express wording of the statute. It is our opinion that the statutory requirement for satisfaction of creditors applies only to creditors of the licensee in connection with the business operated under the license being transferred.