

Opinion No. 66-110

September 28, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Edward R. Pearson, Assistant Attorney General

TO: John M. Eaves, State Representative, District 1, 2308 Dietz Place, N. W., Albuquerque, New Mexico

QUESTION

FACTS

A taxpayer has applied for a liquor license for Sandoval County. The proposed location is within five miles of the incorporated village of Los Ranchos in Bernalillo County. The State Liquor Director has denied the application because of the restriction in Section 46-5-24(b), N.M.S.A., 1953 Compilation (P.S.).

QUESTION

Does the restriction on the issuance of new or additional liquor licenses in Section 46-5-24(b), N.M.S.A., 1953 Compilation (P.S.) apply when the 5 mile zone extends into another county?

CONCLUSION

Yes.

OPINION

{*149} ANALYSIS

Section 46-5-24(b), N.M.S.A., 1953 Compilation (P.S.) provides in part that the maximum number of licenses to be issued:

In unincorporated areas, not more than one (1) dispenser's or one (1) retailer's or one (1) club license for each two thousand (2,000) or major fraction thereof population in any county excluding the population of incorporated municipalities within the county, provided no new or additional license shall be issued in unincorporated areas or transfers approved for locations or premises situate within five (5) miles of the corporate limits of any municipality, * * * *.

The remainder of subsection (b) provides for transfers within the five mile zone and is not relevant to the problem under consideration.

The restriction on the issuance of new or additional licenses in subsection (b) applies to "unincorporated areas" within 5 miles of the corporate limits of any municipality. The phrase "unincorporated areas" is unqualified. If the Legislature had intended to limit application of the restriction to unincorporated areas only within the county where the municipality is located, it could have done so by qualifying the phrase "unincorporated areas" by the phrase "within the county" as it qualified the phrase "incorporated municipalities" in the same subsection.

The 5 mile zone established by subsection (b) is absolute and unqualified. If the restriction were construed not to apply when the zone crosses a county line, the express language that the zone is to be 5 miles would be nullified. Only the Legislature is competent to modify its own enactment.

A literal application of the 5 mile zone in Section 46-5-25, N.M.S.A., 1953 Compilation, which is the same as that in subsection (b), is found in Attorney General's Opinion No. 61-48, June 9, 1961. In that opinion, it was held that where the 5 mile zone surrounding two incorporated municipalities overlap, the present licenses in the overlapping area are to be charged against both municipalities in determining the maximum number of licenses that can be issued in each municipality.

The restriction in subsection (b) is not limited in application to unincorporated areas within a 5 mile zone surrounding municipalities located within a particular county. Subsection (b) expressly provides that the restriction applies to unincorporated {^{*150}} areas within a 5 mile zone surrounding **any** municipality. The Legislature must have intended by the use of the word "any" that the application of the restriction is not to be qualified by the location of the municipality in a particular county. If subsection (b) were construed not to apply to areas in an adjacent county within the 5 mile zone, the word "any" would be superfluous.

Legislative intention is to be ascertained primarily from the language of the statute, and, if the language used is plain and unambiguous, the Legislature must be understood as meaning what it expressly declared. **State v. Thompson**, 57 N.M. 459, 260 P.2d 370 (1953). The language of subsection (b) is plain and unambiguous. Therefore, it is our opinion, the restriction in subsection (b) applies even though the 5 mile zone extends into another county.