

Opinion No. 66-66

May 24, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Joel M. Carson, Assistant Attorney General

TO: Joe A. Armijo, Chief, Division of Liquor Control, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

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1. Can the governing body of a county or municipality delegate to the County or City Manager the responsibility for approving or disapproving:

- (A) The issuance of a new dispenser's, retailer's, or club license;
- (B) The transfer of ownership of a club, dispenser's, or retailer's license;
- (C) The transfer of location of a club, retailer's, or dispenser's license.

CONCLUSION

No.

OPINION

{*82} ANALYSIS

The municipal and county governments of several of the counties and municipalities of this state have adopted the policy of delegating the responsibility for approving or disapproving the issuance and transfer of dispenser's, retailer's and club licenses to either the County Manager or the City Manager. When an application for the issuance of a new license or the transfer of an existing license is transmitted to the local governing body, the local governing body allows the manager to either approve or disapprove the issuance or transfer of the license. The question with which we are here presented is whether this is the proper procedure to be followed by the local governing body. We must answer the question in the negative.

N.M.S.A., 46-4-7 and N.M.S.A., 46-4-8 provide that prior to the issuance or approval of a new license or the approval of a transfer of ownership of an existing license, the Chief of Division of Liquor Control shall give notice to the local governing body that an application for the issuance or transfer of ownership of a license has been received by him. The local governing body must then cause a notice of this fact to be printed in a

newspaper of general circulation setting forth that an application has been made, the name of the applicant, the nature of the license involved, and the date, time and place when the governing body will meet to consider the approval or disapproval of the license. Within thirty days after the date of the last publication in the newspaper, the governing body **must** in a regular or special meeting approve or disapprove the issuance or transfer of the license. If the governing body votes to disapprove the license, the Chief of the Division cannot issue the license. If the local governing body votes to approve the issuance or transfer or takes no action on the application, the Chief of the Division may then in his own sound discretion issue the license or deny the issuance of the license.

It is apparent that N.M.S.A., 46-4-7 and 46-4-8 require the local governing body to pass on the issuance or transfer of the license in regular or specially scheduled meetings. The members of the local governing bodies are not adhering to this procedure if they do not consider the application themselves, but abdicate their duties in this regard in favor of the action of either the County or City Manager.

Liquor Control Regulation No. 4-8-5 requires the Chief of the Division to return the application to the local governing body for reconsideration in the event that he finds that the body has not complied with the provisions of N.M.S.A., 46-4-8. When the Chief of the Division finds that the local governing body has not passed upon an application for the issuance of a new dispenser's, club or retail license, or the transfer of ownership of one of the aforementioned licenses he should not himself either approve or disapprove the transfer, {*83} but should return the application to the local governing body for their action on the application.

The problem involved with transfers of location is different from the problem involved in processing applications for a transfer of ownership or the issuance of a new license. N.M.S.A., 46-5-16(D) provides:

Before any license may be transferred to use at a new location, and before any new retailer's or dispenser's license is issued for a location where alcoholic liquors are not now being sold, the chief of division shall cause a notice of the application therefor to be posted conspicuously on a sign not smaller than thirty (30) inches by forty (40) inches on the outside of the front wall or front entrance of the immediate premises for which the liquor license or transfer is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license or transfer is sought, on a billboard not smaller than five (5) feet by five (5) feet. The contents of the notice shall be in the form prescribed by the division of liquor control, and such posting shall be over a continuous period of twenty (20) days prior to the issuance of the license or transfer.

No license or transfer of license shall be issued until these posting requirements have been met.

As you can see, this section makes no requirement concerning the procedures to be used by the local governing body in considering applications for transfers of location. However, Liquor Control Regulations No. 4-8-1, 4-8-2, and 4-8-3 require the Chief of the Division, the local governing body and the applicant to follow the procedures set forth for the issuance of a new license or the transfer of ownership of an existing license as a prerequisite to the approval of a transfer of location. If these procedures are not followed, the Chief of the Division should return the license application to the local governing body for proper processing.