

Opinion No. 68-72

July 10, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Adolf J. Krehbiel General Counsel Bureau of Revenue Santa Fe, New Mexico

QUESTION

FACTS

The Faculty Club of the University of New Mexico has filed an application for a new club liquor license to be issued for a location upon property and in a building owned by the University of New Mexico.

QUESTION

Does Section 46-10-11, N.M.S.A., 1953 Compilation prohibit the issuance of a liquor license for a location on a state owned building?

CONCLUSION

Yes.

OPINION

{*116} ANALYSIS

At the outset it should be noted that the section above mentioned is, to say the least, inartfully drawn. The meaning of the section is not at all clear. Consequently it must be construed so as to accomplish the intention of the legislature. **C. de Baca v. Baca**, 73 N.M. 387, 388 P.2d 392.

The section about which you ask provides in relevant part as follows:

"It shall be unlawful to drink or consume alcoholic liquors, or for any person who is the owner or proprietor to sell, serve, furnish or permit the drinking or consumption of alcoholic liquors in any public dance hall, pool room, bowling alley, street, state or federal building, or in any other public place or any private or public club, key club or coffee house, whether operated for profit or not except establishments having a license to dispense alcoholic liquors . . ."

The answer to your question turns upon the construction placed upon the language in this section. In essence the question is, does the phrase "except establishments having

a license to dispense alcoholic liquors" modify only the words immediately preceding it or does it extend to, or include words more remote.

One of the cardinal rules of statutory construction is called "the last antecedent doctrine." Under this rule relative and modifying words, phrases and clauses in a statute should be applied to the words or phrase immediately preceding and should not be construed as extending to or including words more remote. The last antecedent doctrine has been adopted as a rule of statutory construction in New Mexico. In **Re Goldworthy's Estate**, 45 N.M. 406, 115 P.2d 627.

Applying this rule to Section 46-10-11, it is our opinion that the phrase "except establishments having a license to dispense alcoholic liquors" modifies the words "any public or private club, key club or coffee house whether operating for profit or not" but does not apply to the first part of the sentence making it unlawful to drink or consume or for an owner to sell, furnish or permit the drinking or consumption of alcoholic liquors in any public dance hall, pool hall, bowling alley, street, state or federal building or any other public place.

Viewed in this manner it is our opinion that it is unlawful to drink or consume or sell or serve or permit the drinking or consumption of alcoholic liquors in a state or federal building.

Analysis of the effects of a contrary result shows the absurdity of such a result. If the modifying phrase applies to the words in the first part of the sentence, one result of such construction would be that a public street could be licensed as an establishment serving alcoholic liquor or, put another way, a license could be issued to a public street to serve alcoholic liquors there. Such a result would, of course, be absurd and cannot be attributed to the legislature.

It appears to this office that the intention of the legislature was that serving or consumption of alcoholic liquors is to be prescribed in state or federal buildings as well as certain other enumerated places where the adult as well as the minor citizens of this state frequent and gather. It seems *{*117}* clear that the legislature felt that the public health, welfare and safety would best be served by prohibiting the sale or serving of alcoholic liquors in these public places. We can find no provision in statutes of this state that even hints that the legislature intended to establish as a general rule a policy to permit the sale or consumption of alcoholic liquors in state or federal buildings.