

Opinion No. 69-24

April 7, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Honorable David F. Cargo, Governor of New Mexico Legislative-Executive Building,
Santa Fe, New Mexico

QUESTIONS

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Does House Bill 88 relating to Sunday liquor sales in three New Mexico counties and public horse race tracks in this state violate Article IV, Section 24 of the New Mexico Constitution?

CONCLUSION

See Analysis.

OPINION

{*34} ANALYSIS

We have taken the liberty of re-phrasing your question to meet the specific constitutional problem found in House Bill 88.

Before discussing the specific constitutional issues found in House Bill 88 it should be pointed out that there would appear to be no unconstitutional act on your part in signing this bill since on April 3, 1969 you signed House Bill 268 which allows licensed dispensers to serve and permit the consumption of alcoholic beverages on their premises on Sunday from 7:00 A.M. until midnight. As to licensed retailers, this bill prohibits sale and delivery of {*35} alcoholic liquors, but permits licensed dispensers to serve and permit the consumption of alcoholic liquors on Sundays.

Section 46-1-1 of the New Mexico Statutes Annotated, 1953 Compilation defines the term "dispenser" as:

"Any person selling, offering for sale or having in his possession with intent to sell, alcoholic liquors by the the drink or in packages."

The same statute defines the term "retailers" as:

"Any person selling, offering for sale or having in his possession with the intent to sell, any alcoholic liquors for consumption off of the premises of the licensee and in unbroken packages."

Since the new language of House Bill 268 allows a dispenser to serve and permit the consumption of liquor on their premises on Sundays but specifically does not provide for package sales of liquor, package sales would not be allowed but sales served (and consumed) on the premises by the drink would be.

If any provisions of House Bill 88 should be held unconstitutional by a Court as special or class legislation by county (Article IV, Section 24, New Mexico Constitution), Section 2 relating to Sunday sales at race tracks appear to be severable. See **In re Gibson**, 35 N.M. 550, 4 P.2d 643 (1931); **Clovis National Bank v. Callaway**, 69 N.M. 119, 364 P.2d 748 (1961); **Bradbury and Stamm Construction Co. v. Bureau of Revenue**, 70 N.M. 226, 372 P.2d 808 (1962); **Schwartz v. Town of Gallup**, 22 N.M. 521, 165 Pac. 345 (1917).