

## **Opinion No. 77-28**

November 4, 1977

**OPINION OF:** Toney Anaya, Attorney General

**BY:** Albert V. Gonzales, Assistant Attorney General

**TO:** Carlos Jaramillo, Director Department of Alcoholic Beverage Control Lew Wallace Building Santa Fe, New Mexico 87501

ELECTIONS-LIQUOR LICENSES-ALCOHOLIC BEVERAGE CONTROL.-Section 46-10-14.1(C) requires the closing of the entire business of a licensee even if the liquor business is run in conjunction with another lawful business.

Section 46-10-14.1(C) requires the closing of liquor establishments in only the geographical area in which an election is conducted.

### **QUESTIONS**

1. Must all dispenser, retail and club licensees located within the municipal limits of Albuquerque close during a runoff election involving only one council district within the city?
2. Does Section 46-10-14.1(C), NMSA 1953 Comp. (1975 Supp.) require the closing of the entire business of a licensee if the liquor business is run in conjunction with another lawful business?

### **CONCLUSIONS**

1. No. See Analysis.
2. Yes, but see Analysis.

### **ANALYSIS**

Pursuant to Article IV, Section 2 of the City Charter of Albuquerque, only those registered qualified electors who reside in District No. 3 will be voting in the runoff election. Therefore, you have asked whether all dispenser, retail and club licensees located within the municipal limits of Albuquerque must close or whether only those licensees located within the limits of District No. 3 must close during the election. You have also asked whether the Liquor Control Act requires the closing of the entire business of a licensee if the liquor business is run in conjunction with another lawful business.

### **OPINION**

Section 46-10-14.1(C), NMSA 1953 Comp. (1975 Supp.) provides in pertinent part that:

Dispenser, retail and club licensees shall close their places of business during voting hours on the days of the primary election, general election, elections for officers of a municipality and any other election as prescribed by the rules and regulations of the director of the department of alcoholic beverage control. . . . (Emphasis added.)

The answers to your questions require an analysis of what the legislature intended to mean by Section 46-10-14.1(C), supra, and what ends the legislature sought to be accomplished by it. Section 46-10-14.1, supra, previously read that "Dispenser, retail and club licensees shall close their places of business during voting hours . . . in a municipality on the days of elections therein for municipal officers." Laws 1959, Ch. 303, § 1. Therefore, under the previous statute, it is apparent that the legislature intended to require the closing of all licensed establishments within that municipality during a municipal election. However, the language "in a municipality" was removed by Laws 1969, Ch. 280, § 1 which repealed Laws 1959, Ch. 303, § 1 and which is identical to the present language of Section 46-10-14.1(C), supra. We must presume that the legislature, in enacting a statute, intended to change the law as it has theretofore existed. *Bettini v. City of Las Cruces*, 82 N.M. 633, 485 P.2d 967 (1971); *Stang v. Hertz Corp.*, 81 N.M. 69, 463 P.2d 45 (Ct. App. 1969), *aff'd*, 81 N.M. 348, 467 P.2d 14 (1970). Making that assumption, we must conclude that the legislature intended to change the requirement that all licensees within the municipality must close whenever a municipal election is conducted.

The question remains as to what standard we must now follow under the present language of Section 46-10-14.1(C), supra. The intent of legislatures in enacting statutes like Section 46-10-14.1(C), supra, is to protect the purity of elections. *Mallon v. Com.*, 30 Ky. L. Rep. 328, 98 S.W. 315 (1906). Requiring {\*166} the closing of those licensed establishments in the immediate geographical area in which the election is conducted is the area in which the closings must take since the fact of an election is what triggers the closings.

Since the runoff election to be conducted will only take place within District No. 3, it is only common sense to interpret Section 46-10-14.1(C), supra, to mean that only those dispenser, retail and club licensees located within the boundaries of District No. 3 must close their places of business during voting hours on the day of the runoff election. Such an interpretation is appropriate in this case since courts are required to give common sense interpretations to statutes. See *State v. Olive*, 85 N.M. 664, 515 P.2d 668 (Ct. App.), *cert. denied*, 85 N.M. 639, 515 P.2d 643 (1973). If the legislature intended anything else, it could have described specific areas for each of the elections mentioned in which closings would be required. This it did not do and therefore we must assume a common sense interpretation in this instance.

Your second question relates to whether Section 46-10-14.1(C), supra, requires the closing of a licensed establishment if another business is carried on in the same establishment, such as a restaurant, billiard room, bowling alley or grocery store.

Statutory words are presumed to be used in their ordinary and usual sense. *Bettini v. City of Las Cruces*, supra, *Nunn v. Nunn*, 81 N.M. 746, 473 P.2d 360 (1970); *Valley Country Club, Inc. v. Mender*, 64 N.M. 59, 323 P.2d 1099 (1958). In this case, Section 46-10-14.1(C), supra, uses the words "shall close their places of business" during the hours of certain elections. The ordinary meaning of the word "close" is "to block against entry or passage; to deny access to; to suspend or stop the operations of." Webster's New Collegiate Dictionary 210 (1976). When used in the context of a statute requiring closing, during certain hours or days, of places where intoxicating liquors are sold, "close" has been interpreted to mean the exclusion of the public from or absolute closing of the front, sides and rear of that part of the premises used for the purpose of selling liquors. *State v. Perez*, 243 P.2d 309 (Mont. 1952); *People v. James*, 100 Mich. 522, 59 N.W. 236 (1894); *People v. Blake*, 52 Mich. 566, 18 N.W. 360 (1884).

A "place of business" has been interpreted to mean the entire premises to which the public generally is expressly or impliedly invited for the purpose of transacting business with the owner and is simply a location where business is transacted or in other words, a shop, office, warehouse or other commercial establishment. *Simpson v. Goldworm*, 59 So. 2d 511, 513 (Fla. 1952); See also *Redding v. State*, 16 Ga. App. 315, 85 S.E. 278 (1915). Thus, the ordinary and usual meaning attributable to the words "shall close their places of business" in the context in which they are used is interpreted to mean that dispenser, retail and club licensees must stop or suspend the operation of not only their liquor operation but also any other business which operates on the same premises as that used for the purpose of selling liquor since the entire premises must be closed.

Statutes or ordinances providing for the closing, during certain days or hours, of places in which intoxicating liquors are sold, have been construed, in the majority of cases considering the matter, as requiring that such places be completely closed during such times, and that therefore a restaurant or {<sup>167</sup>} other business must be closed during the restricted days or hours, particularly if the liquor business and the restaurant or other business were conducted in the same room. Annot., 139 A.L.R. 756 (1942).

The typical reasoning for such a construction by various courts was stated very succinctly in *Cleveland v. Rice County*, 56 N.W.2d 641 (Minn. 1952) where the Supreme Court of Minnesota said:

There is no merit to the further claim of appellants that the effect of the resolution [statute] is to deprive them of the right to conduct other nonlicensed businesses. The sale of nonintoxicating malt liquors has always been subject to public control. The license to sell such beverages is not a property right but is in the nature of a privilege, and, as such, subject to reasonable regulations. [Citations omitted.] The disadvantage of most "privileges" is that to obtain them one must give up certain "rights." The simple result in this case is that to enjoy the profits of this type of business, one must make certain concessions, among them the possibility of being restricted in the use of the premises on which such sale is licensed. Appellants are still free to engage in other activities without restriction at another location. 56 N.W. 2d at 644.

In regard to the validity of statutes and ordinances requiring the closing of liquor establishments during an election, it has been said that:

The state, in granting the license, has a right to prescribe on what days the license may be exercised, and the person who accepts the license takes it subject to the conditions imposed by law. The state, in the exercise of its police power, may make reasonable regulations to protect the purity of elections, and the regulation that saloons shall be closed on election days is certainly not an unreasonable exercise of the police powers of the state. *Mallon v. Comm.*, supra.

The only exception allowed by the courts from the requirement of completely closing the entire business has been for hotels. Statutes such as Section 46-10-14.1, supra, have been held not to require the closing of hotels and their restaurants during restricted days or hours; however, although hotels have been allowed to remain open, they have not been excepted from the prohibition of selling intoxicating liquors during the restricted days or hours. 39 A.L.R. at 765 (1942); *State v. Eckert*, 74 Minn. 385, 77 N.W. 294 (1898); *State v. Ryan*, 50 Conn. 411 (1883); *State v. Gregory*, 47 Conn. 276 (1879). To require the complete closing of hotels licensed to dispense liquor would force guests or lodgers out of their rooms and into the streets which would be both absurd and unreasonable. Statutes are to be construed so that their application will neither be absurd nor unreasonable. *Trujillo v. Romero*, 82 N.M. 301, 481 P.2d 89 (1971); *Midwest Video v. Campbell*, 80 N.M. 116, 452 P.2d 185 (1969). Moreover, it is permissible to adhere to the obvious spirit or reason of the law when any other construction would either defeat the statute's intent or lead to absurd results. *State v. Nance*, 77 N.M. 39, 419 P.2d 242 (1966); *Martinez v. Research Park, Inc.*, 75 N.M. 672, 410 P.2d 200 (1968). Therefore, in order to avoid defeating the legislature's intention to {\*168} protect the purity of elections, Section 46-10-14.1(C), supra, should be construed to mean that hotels licensed to sell liquor may stay open for lodging purposes only but any areas within the hotels such as restaurants and bars where intoxicating liquors are sold and served must be closed during the voting hours of the election. Thus, we will treat hotel restaurants and nonhotel restaurants in an equal and even-handed manner.

In conclusion, it is the opinion of this office that pursuant to Section 46-10-14.1(C), supra, all dispenser, retailer and club licensees located within the boundaries of Council District No. 3 in Albuquerque must completely close their places of business, be they restaurants, grocery stores or bowling alleys, during voting hours of the municipal election to be held to select the District No. 3 Councillor. Hotels licensed as dispensers or retailers may stay open, for lodging purposes only, but any areas within such hotels, such as restaurants and bars where intoxicating liquors are sold and served, must be closed during the voting hours of the election.

## **ATTORNEY GENERAL**

Toney Anaya, Attorney General