

Opinion No. 82-15

September 27, 1982

OPINION OF: Jeff Bingaman, Attorney General

BY: Arthur J. Waskey, Assistant Attorney General; Serapio L., Jaramillo, Assistant Attorney General

TO: Honorable Shirley Hooper, Secretary of State, Executive-Legislative Building, Santa Fe, New Mexico 87503

ALCOHOLIC BEVERAGES: LICENSES AND LICENSING; ELECTIONS

All counties, except Roosevelt and Curry, and the incorporated municipalities of Clovis and Portales are local government jurisdictions which are "local option district" for the purpose of placing the question of Sunday sales of alcoholic beverages on the 1982 general election ballot.

FACTS

1981 N.M. Laws, ch. 39, sec. 47 (Section 60-7A-1 NMSA 1978) requires that for the 1982 general election "the secretary of state shall order placed on the ballot in each local option district the question 'shall Sunday sales of alcoholic beverages be made in this local option district?'" Section 3 of 1981 N.M. Laws, ch. 39 (Section 60-3A-3 NMSA 1978) defines "local option district" as "either a municipality of over five thousand population . . . or a county which has voted in favor of the sale of alcoholic beverages within the limits of that county or municipality under the terms of the Liquor Control Act or any former act." Nonetheless, Opinion of the Attorney General No. 81-9, May 28, 1981, interprets "local option district" to mean "any county which has voted to approve the sale of alcoholic beverages, . . . or **any** incorporated municipality which falls within such a county, . . . or any incorporated municipality over 5000 which has independently approved the sale of alcoholic beverages." (Emphasis added). If the interpretation of "local option district" advanced in Opinion No. 81-9 is applied to the Sunday sales provision, the Secretary of State does not have the means, and thus it is impossible, during a general election to separately tabulate the votes of all small incorporated municipalities under 5000 population. This is so because the requirements for voter registration for general elections do not always result in information necessary to make this separate count.

QUESTIONS

For the purpose of placing the question of Sunday sales of alcoholic beverages on the 1982 general election ballot, which local government jurisdictions are "local option districts"?

CONCLUSIONS

All counties, except Roosevelt and Curry, and the incorporated municipalities of Clovis and Portales.

ANALYSIS

In the Opinion of the Attorney General No. 81-9, May 28, 1981, we advised that in order to fulfill the legislative intent that all counties and incorporated municipalities maintain local control over the issuance and transfer of liquor licenses within their jurisdictions, the term "local option district", as used throughout the new Liquor Control Act (1981 N.M. Laws, ch. 39; Sections 60-3A-1 through 60-8A-19 NMSA 1978), must be *{*305}* given a broader interpretation than the statutory definition found at Section 60-3A-3(M). This was necessary because of the several new contexts in which the term was used which did not comport with the definition which has existed since the passage of the 1939 N.M. Laws, ch. 236, sec. 101, 501. We therefore concluded that the term must include any county, or any incorporated municipality over five thousand population, which has independently held an election to become a local option district, or any other incorporated municipality within such a county.

OPINION

The interpretation rendered in Opinion No. 81-9 has been adopted as the interpretation of the Department of Alcoholic Beverage Control. It has, for example, been applied since the effective date of the Liquor Control Act, July 1, 1981, to elections for the approval of restaurant licenses, Section 60-6A-4; to elections approving or disapproving statewide transfer of licenses, Section 60-6B-12; and to approval of the issuance and transfer of licenses by local governing bodies, Sections 60-6B-2, 60-6B-4. This application has created no anomalies in the administration of the Liquor Control Act.

Opinion No. 81-9, however, did not address directly any question concerning the forthcoming Sunday sales election.

The Sunday sales election provision in the Liquor Control Act is, for all intents and purposes, a verbatim reenactment of the same provision found in the prior law. Compare 1971 N.M. Laws, ch. 30, sec. 1 with 1981 N.M. Laws, ch. 39, sec. 47. However, as the Secretary of State has indicated, if the interpretation of "local option district" in Opinion No. 81-9 is applied to the Sunday sales election, the information which results from registration for general elections will not enable the Secretary to count separately votes of low population incorporated municipalities, which are considered local option districts in that Opinion's interpretation. Therefore, it is necessary to resolve this incongruity because it cannot be said that the legislature, when enacting the Liquor Control Act, intended an absurd or unreasonable result regarding the Sunday sales election provision. **Gutierrez v. City of Albuquerque**, 96 N.M. 398, 631 P.2d 304 (1981).

Resolution is simple. Since the current Sunday sales election provision is a mere re-enactment of prior law, it would follow that the legislative intent regarding the term "local option district" as used in the Sunday sales election provision is that it be defined in accordance with the statutory definition applicable before other sections of the new Liquor Control Act required the broader interpretation advised by Opinion No. 81-9. Thus, the statutory definition of "local option district" found at Section 60-3A-3(M), being, with some wording changes, the same as prior law, is applicable to the Sunday sales election provision considered here.

Applying this definition to records of local option district status elections, it is clear that the Secretary of State must place the question of Sunday sales on the general election ballots, and separately tabulate votes, in each county except Roosevelt and Curry, which have rejected local option district status, and in the incorporated municipalities of Clovis and Portales, which have independently voted to become local option districts. See also, Opinions of the Attorney General No. 81-9, May 28, 1981, and No. 71-116, November 17, 1971. The Secretary of State is therefore able to administer the Sunday sales election in a reasonable manner.

This conclusion expressly overrules that portion of Opinion of the Attorney General No. 71-116, November 17, 1971, which implies that the procedure and qualifications for becoming a local option {306} district can be applied for the purposes of the Sunday sales election to incorporated municipalities which are not "local option districts" pursuant to the statutory definition.

ATTORNEY GENERAL

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