

Opinion No. 12-873

March 28, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Quintus A. Kaune, Portales, New Mexico.

PORTALES, TOWN OF. SALE OF LIQUOR.

Power of Town of Portales to prohibit the sale of liquor. County Clerk to issue liquor licenses. Jurisdiction of judges of District Courts.

OPINION

{*17} I have received your letter of the 23rd inst., and hasten to reply. The important question which you ask is for my opinion as to whether the Town of Portales, incorporated before the passage of the act which is printed as Chapter 117 of the Laws of 1909, has the power given by the eighteenth subdivision of Section 2402 of the Compiled Laws of 1897, to prohibit the sale of intoxicating liquor within the limits of the town. I entertain no doubt that that power still continues in any towns except those incorporated under the act of 1909. The act of 1909 repeals only Sections 2476 to 2492 of the Compiled {*18} Laws, and by that repeal, the new act in no way impairs the status, authority or power of the towns already in existence.

As to the other question about who is to issue retail liquor licenses, I am equally clear that the legislation in Chapter 108 of the Laws of 1901 supersedes Section 4123 of the Compiled Laws, so that it becomes a matter of course for the county clerk to issue a license upon the report of the application to him by the assessor. I think that you will agree with me in this upon examination of Chapter 19 of the Laws of 1901, which relates only to liquor and gaming licenses. By Section 7 of that act, it is provided that all applications for licenses shall be made as required by Section 4156 of the Compiled Laws of 1897, and there is nothing in the whole chapter to show any intention that its provisions should not cover saloons and gaming houses in cities and towns as well as outside thereof. This act was adopted March 9, 1901, and Chapter 108 was adopted twelve days later, and by Section 6 of the latter act, a new Section 4156 is created, and as it takes the place of the old section of that number, it follows that this provides the exclusive method of applying for licenses and for their issuance.

I do not feel certain, however, that it is the duty of the county clerk to issue a license to a person to do business within the limits of an incorporated town which has prohibited the carrying on of that business, but as to this, I am not now prepared to express a positive opinion.

As to the power of municipal authorities conferred by Section 4 of Chapter 115 of the Laws of 1905, to which you make reference, that relates only to the revocation of

licenses for certain specified reasons, but if a business is entirely prohibited by the town, I believe your proper position would be to attempt to punish the offender for violation of the city ordinance, and not to take any proceedings to revoke his license, as that would seem to admit that he had a valid license.

As to whether a judge from another district holding court in a different district from your own, in your district, would have jurisdiction to grant an injunction against a person in your county, I incline to the opinion that he would not have such jurisdiction. Section 15 of Article VI of the Constitution provides that any district judge may hold district court in any county at the request of the judge of such district court. I assume that under this clause, Judge Abbott is holding court in Curry County at the request of the judge of your district court. That does not seem to confer jurisdiction on Judge Abbott holding court in Curry County, to adjudicate as to matters in Roosevelt County, especially when your own judge is anywhere within the district. I can see no reason why your town authorities may not maintain a suit for an injunction against the would-be saloon keeper.