Opinion No. 14-1226

May 8, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable C. B. Hudspeth, Mills Building, El Paso, Texas.

LIQUORS.

As to whether a club can be organized to dispense liquors to its members in a community where local option has been voted.

OPINION

*{*85}* I have just received your letter of the 7th inst., asking my opinion as to whether or not a club can be organized to dispense liquors to its members in a precinct or community where local option has been voted.

There is nothing in our statutes which distinctly covers the point about which you ask. Section 4139 of the Compiled Laws of 1897, which was originally a section of Chapter 56 of the laws of the same year, makes it unlawful for any kind of a club or association organized as such to sell, directly or indirectly, any fermented or alcoholic liquors without first having procured a license to sell the same. We have had no adjudication under this section as to whether it applied to a club not organized for alcoholic purposes which dispensed to its members such liquors without any purpose or effort at profit. I have, personally, been of opinion that a club, which in an incidental way allowed its members to purchase from a stock of liquors that which they needed at prices which would only cover the expenses of that part of the business of the club, should not be required to pay a license, and I believe that there are quite a number *{*86}* of clubs in New Mexico of that character which have not paid the ordinary license. There is much conflict of authority on this subject, as I recollect from having looked the matter up some years ago with some care.

When we come to territory which, under the local option laws, has adopted prohibition under either Chapter 75 or Chapter 78 of the Laws of 1913, we do not get anything definite as applicable to such clubs. Under each of those acts, after the adoption of prohibition, that which is prohibited is "the barter, sale or exchange of intoxicating liquors." I would not venture to predict whether the courts would hold that the serving of liquors to members of a club at cost would constitute a sale or not as clubs are usually conducted. The transactions are in the form of sale. A member buys a drink and pays for it. It has appeared to me that the correct view to take of such an organization and of its liquor dealings would be to liken it to the case of four or five men who might live in the same house together and who would lay in a stock of alcoholic liquors for their own use, a careful account being kept of whatever was consumed by each one from the common stock, so that the expense of buying and serving the liquors could be

apportioned to each one according to the amount of his consumption. When reduced to this statement, it has seemed to me clear that no one could say that there was any question of a sale, or of the doing of a retail liquor dealer's business. I cannot see that the same view ought not to apply to a club of perhaps hundreds of members, provided that the same idea was made to control. It might not be practicable to adjust the amount each member should pay as accurately or as readily as in the supposed case of a few men living together. The method of doing this would have to be different, but if substantially the same result followed, it does not seem to me that it would be a violation of the law.

I feel quite certain, however, that any club or association which conducted its business of dispensing liquors to members in such a way as to realize any profit from the business, could not be tolerated under our local option laws, nor under our general license law without the payment of a license.