

## Opinion No. 16-1795

May 12, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. E. A. Martin, Gallup, New Mexico.

**No double taxation in the imposition of a state license and a municipal license on the same business.**

### OPINION

{\*362} I have your letter of the 10th instant asking my views upon the question of double assessment of saloon licenses, that is, by the county authorities and the various municipalities. As you say, it is customary to require a saloon-keeper to take out a county license under Section 2881 of the Codification of 1915, and also a municipal license under sub-section 18 of Section 3564 of the same Codification. You say that you take the view that this is double taxation and that the legislature never contemplated any such double license plan.

This is the first time that I have ever met any suggestion that there was any reason why there should not be a county license issued under the statute and another license imposed by city ordinance under the authority of said sub-section 18 of Section 3564, and there never has, I am sure, been raised any such question in the past. I do not think that the imposition of a state license and a municipal license on the same business is, in any proper sense of the term, "double taxation," but if it were, there is nothing in our constitution or laws to prohibit it.

Your first suggestion about the statutes is that Sections 2875 to 2881 of the Codification are amended and modified by sub-section 18 of Section 3564, evidently because the first cited sections are portions of a law of 1891, while said sub-section 18 is a portion of Chapter 69 of the Laws of 1897. The Codification is one single whole statute and, if possible, all parts thereof must be construed so as to be given effect, but it is true that in the repealing and saving clause it is provided in case of any inconsistencies that reference may be had to the date of the passage of the original acts. There would be more force, with this provision in mind, in your suggestion were it not for the fact that said sub-division 18 is substantially the same as to the power of municipalities over the liquor business as was sub-division 18 of Section 2402 of the Laws of 1897, which originally was a part of Chapter 46 of the Laws of 1893. The power to license liquor business was not given in 1907, but originally in 1893. If, however, there were anything in the repealing idea and there is any inconsistency between these different statutes, the doubt would be removed by Chapter 28 of the Laws of 1915 which re-enacts said sub-section 18 with more amendments and reiterates the authority to municipalities to license the selling of liquor. That is the latest legislative expression on the subject and I am unable to discover any doubt as to the municipal power over this subject.

Referring again to Sections 2875 to 2884, which are the sections under which the county license is issued, an examination of them will show that they cover licenses for use within the limits {\*363} of municipalities as well as outside of them. In Section 2876 there is a gradation of the amount to be paid for licenses "in a precinct, village, town or city," according to population. In the proviso in the same section, licenses are prohibited for sale of liquors "except within the limits of a city, town or village."

In Section 2877 it is provided that the census shall govern as to population until the county commissioners or municipal authorities "may have a new census taken for precincts or towns, villages or cities."

Section 2884 provides for the transfer of a license to be used only "in the same precinct, town, village or city for which the same was issued."

In Section 2888 there is a provision that licenses shall not authorize the selling of liquors "in more than one place in such precinct, village, town or city, as the case may be."

I cannot see that the provision in Section 2893, authorizing the county commissioners to revoke a license for a saloon outside of any incorporated place, and a like authority to the municipal authorities of any incorporated place, throws any light upon the question raised. It appears to me to give the municipal authorities power to revoke a county license as well as to revoke a municipal license if there be any. Nor do I see that the distinction as to local option elections of territory within or without municipalities, in the one case being under the control of the municipal authorities and in the other, under the county commissioners, can have any controlling effect. Within municipalities the authorities of the place are best adapted to hold the election and canvass the result, while outside of such incorporated places there is no authority available except that of the county commissioners.

My conclusion is that retail liquor dealers in incorporated places may be subjected to two licenses, one provided by Section 2881, to be issued by the county clerk, and another issued by the municipal authorities under the power given by sub-section 18 of Section 2403 of the Compiled Laws of 1897 as amended by Chapter 59 of the Laws of 1907, and further amended by Chapter 28 of the Laws of 1915.