

Opinion No. 21-2935

April 27, 1921

BY: A. M. EDWARDS, Assistant Attorney General

TO: Rev. Buren Sparks, Santa Fe, New Mexico.

Enforcement of Prohibition Laws.

OPINION

{*48} This office has the letter from Rev. C. J. Strickland of April 19, 1921, addressed to you, regarding the enforcement of the prohibition law.

The sheriff of Luna county is mistaken when he says that we have no state laws on this question. Article XXIII of our Constitution prohibits the manufacture for sale, barter or gift of intoxicating liquors, and also prohibits the barter, sale or gift of such liquors within the state.

Section 2 of this article provides a penalty by fine of not less than fifty dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than thirty days nor more than six months, or both, for the first offense. Subsequent offenses by the same person may be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and imprisonment in the county jail or state penitentiary for a term of not less than three months nor more than one year.

{*49} Chapter 151 of the Laws of 1919 provides for the enforcement of the foregoing provision of the Constitution, and in addition to providing punishment for offenses under the prohibition article of the Constitution, provides for the issuance of search warrants and requires the district court judges to give specific instructions to the grand juries to investigate the failure of officers to comply with the provisions of the act.

This chapter also gives justices of the peace concurrent jurisdiction with the district court in the trial and punishment of the persons prosecuted under the provisions of the act where the penalty imposed is a jail sentence only.

It is true that the state officers have no right to make arrests for violation of federal laws, but there is no reason why a state officer should not accompany a prohibition officer when the latter is enforcing the federal laws. The same transaction may be an offense against both the United States and the state laws, and a conviction under either does not relieve the offender from the liability of being prosecuted under the other.