

Opinion No. 33-571

April 5, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mr. W. H. Springer, P. O. Box 206, Las Vegas, New Mexico.

{*34} Replying to your letter of April 2, 1933, the answer to questions (1) and (2) can be readily given as "No," which answers will be modified, however, in answering your question (3).

Your question (3) is as follows:

(3). The Congress of the United States and the National Administration maintain that 3.2 beer and wines are non-intoxicating. Therefore, if the answer to No. (1) and No. (2) are "No," what is there to prevent anyone from legally transporting in, through, or out of New Mexico 3.2 beer and wines (non-intoxicating) and also legally selling such products within the confines of this state.

To answer briefly, in my opinion, Article XXIII of the New Mexico Constitution prevents any of the acts mentioned by you, except possible the transportation of such beer and wine through the State in original packages in interstate commerce. The difference between our constitution and the Federal constitution is the reason.

The Federal constitution merely prohibits "intoxicating liquors," and, under the theory of our national lawmakers, this permits congressional acts to define "intoxicating liquors." The Volstead Act defined "intoxicating liquors" as such which contained more than one-half of 1 per cent alcohol, and the later act (the beer and wine act) declares that wine and beer containing not more than 3.2 per cent alcohol are not "intoxicating liquors." Our constitution prohibits the sale, etc., of any "ardent spirits, ale, beer, alcohol, wine or liquor of any kind whatsoever containing alcohol," with certain exceptions as set forth in said provision.

Consequently, neither the Federal or State legislative bodies can pass any valid laws to allow beer or wine to be sold, etc., within this state which contain alcohol, as long as Article XXIII remains as a part of our organic law.

Whether said Article remains a part of our Constitution will be determined by the votes of this state upon September 19, 1933.