

Opinion No. 44-4627

December 21, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mr. Victor Salazar, Chief, Division of Liquor Control, Bureau of Revenue, Santa Fe, New Mexico

In your letter dated December 19, 1944, you refer to Section 61-525 of the New Mexico 1941 Compilation and inquire whether the measurement should be determined by air line or by the nearest traveled route. This section provides as follows:

"Except as to existing licenses and renewals thereof, the chief of division of liquor control of the New Mexico bureau of revenue shall henceforth issue no retail, dispenser or club license for the sale of alcoholic liquor within any area adjacent to and not exceeding one and one-half (1 1/2) miles in any direction measured from the exterior boundaries of any United States army post where United States military troops are domiciled."

In the case entitled Board of Trustees of Leland Stanford Junior University vs. State Board of Equalization, 1 Cal. 2d 784, 37 P. 2d 84, 96 A. L. R. 775, decided in 1934, the California supreme court considered a law prohibiting the sale of liquor within one and one-half miles of the University grounds. It was held by that court that the distance is to be measured from the campus limits and by a direct and straight line.

To the same effect are numerous cases annotated in 96 A. L. R. at Page 778.

In view of these authorities, I am of the opinion that the distance contemplated in Section 61-525 should be measured in a straight line from the nearest boundary of the army post in determining whether a location is within the distance prohibited.