

Attorney General of New Mexico



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January 26, 1987

OPINION
OF
HAL STRATTON
Attorney General

Opinion No. 87-2

By: Carolyn Wolf
Assistant Attorney General

To: David Sierra, Director
Alcoholic Beverage Control Department
224 E. Palace
Santa Fe, New Mexico 87501

QUESTIONS:

1. Is it a violation of the Liquor Control Act to be convicted of a felony?
2. Does N.M. Stat. Ann. §60-6C-9 (1978) apply to N.M. Stat. Ann. §60-6B-1.

CONCLUSION:

See Analysis.

ANALYSIS:

We have been informed that these questions were asked because Southland Corporation, a felon, offered to pay a fine to avoid losing its license in a revocation proceeding.

In view of the nature of the liquor business as it has heretofore been described by the various opinions of this court any practice of allowing the issuance of liquor licenses without regard to the statutes governing the issuance thereof might lead to intolerable danger and chaos. The Chief of the Division of Liquor Control having power to grant liquor licenses under the provisions of the statute has likewise inherent power to cancel and revoke any license which he finds has been, for any reason, issued without authority or issued in conflict with the statutes governing and limiting the issuance thereof.... The appellant...not only had the right and power to revoke and cancel the license illegally issued, but it was [his] duty... to proceed to cancel and revoke it upon discovering that it had been issued without legal authority and in contradiction of the plain provisions of the statute.

57 N.M. at 189, 256 P.2d at 800-801. Under Baca v. Grisolano, the Director has the duty to revoke or cancel a license when he discovers that it has been issued without legal authority and in contradiction of the plain provisions of the statute. For a convicted felon to receive a license would violate the statute, and the Director has no authority to issue such a person a license. Lacking any statutory basis for a felon to hold a license, the Director must cancel or revoke any license that a convicted felon may hold. Nothing in section 60-6C-9 gives the Director the power to waive or disregard the legislature's decision in section 60-6B-1 that convicted felons, or other specified classes of persons, such as minors, shall not hold a license.

The Director may accept a fine for specific violations of section 60-6B-1. The Director may not allow Southland to continue to hold a license because Southland did not meet minimum qualifications for licensure when it received its license. To permit Southland to continue to hold a license would authorize a license in direct conflict with the statute and would be inconsistent with the Supreme Court's decision in Grisolano.

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FOR IMMEDIATE RELEASE
January 27, 1987

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Santa Fe, New Mexico, January 27, 1987 --- Attorney General Hal Stratton yesterday issued an opinion holding that a person convicted of a felony under the New Mexico Liquor Control Act may not renew their liquor licenses. The Attorney General's Opinion was requested by former Alcoholic Beverage Control (ABC) Director Abe Rodriguez in response to a situation regarding the Southland Corporation, an ABC licensee, which was convicted of a felony in New York State in 1984.

The Liquor Control Act prohibits a person convicted of a felony from receiving or holding a new or renewed liquor license. It is a violation of the Act for a convicted felon to receive or hold a new or renewed liquor license and, although the Director of ABC has the authority to compromise any penalties or fines imposed upon a licensee for violations of the Act, the Director does not have the authority to permit a convicted felon to obtain a new liquor license or to renew a liquor license.

(opinion attached)