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OPINION
OF
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No. 87-10

By: KATHERINE ZINN
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To: David Sierra, Director
Alcoholic Beverage Control
224 East Palace Avenue
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QUESTION

Whether the definition of "licensed premises" contained in NMSA 1978, Subsection 60-3A-3(L) will permit the licensing of two or more totally independent structures under a single liquor license where one of the structures is already licensed as a full service lounge and the licensee proposes to operate a resturant, also to provide full service liquor sales, in another structure located several hundred yards away from the lounge.

CONCLUSION:

No.

ANALYSIS:

We understand that the Alcoholic Beverage Control ("ABC") has asked this question because a licensee asserts that he should be required to obtain only one liquor license for two structures that are located upon several hundred acres owned by the licensee. The two structures are unconnected and are located several hundred

yards apart. The licensee presently operates a lounge with a full service liquor license in one of the structures and proposes to operate a restaurant, also providing full service liquor sales, in the other structure. The licensee asserts that the two unconnected buildings upon his land fall within the language " all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel or racetrack," as used in subsection 60-3A-3(L). The licensee thus argues that he does not need to acquire another liquor license for the proposed restaurant.

Before analysing the specific issue presented, it is important to note that it is within this State's interest to require stringent controls over the consumption and sale of alcoholic beverages within our borders. See Section 60-3A-2 NMSA 1978. "The purpose of liquor control legislation is to regulate and restrain and not to promote. [A]ny loosening of [that policy] is the business of the legislature..." State ex rel. Maloney v. Sierra, 82 N.M. 125, 135, 477 P.2d 301, 311 (1970) (citation omitted). Thus, as we interpret the legislative intent behind the Liquor Control Act, we recognize that a liberal interpretation is not favored, and changes in the law that promote liquor consumption are for the legislature, not for this Office.

Subsection 60-3A-3(L) provides:

> "[L]icensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation, and lounge areas of the structure which are under the direct control of the licensee and from which the licensee is authorized to sell, serve, or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, hotel or racetrack, "licensed premises" includes all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel or racetrack.

This subsection must be read with subsection 60-3A-3(S), which defines "restaurant". That subsection reads in pertinent part:

> [A]ny establishment having a New Mexico resident as a proprietor or manager which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public

> in consideration of payment and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in regulations promulgated by the director serving only hamburgers, sandwiches, salads, and other fast foods.

The operative words in this subsection are "primarily for on-premises consumption". Restaurants customarily serve patrons on the site of the restaurant. Therefore, under subsection 60-3A-3(L), the "licensed premises" are those public and private rooms, areas, and facilities in which restauranteurs regularly furnish meals to customers.

The provisions of New Mexico's Liquor Control Act declare the legislature's intention that the sale of alcoholic beverages in restaurants should be incidental to the restaurant's business. The Act seeks to prevent restaurants from becoming places where the sale and consumption of alcohol is the primary object of the business. See, e.g., NMSA 1978, Sections 60-6A-4(2) and 60-6A-4(3). New Mexico's statutory scheme is such that restaurants may serve alcoholic beverages only in the normal course of preparing and serving meals to customers on the restaurant premises.

In Long v. Capital Gardens, 142 Fla. 261, 194 So. 625 (1940), the Florida Supreme Court, under a factual situation analogous to that presented herein, determined that a licensee is required to have a license for each separate structure in which the licensee proposes to sell alcoholic liquors. The Florida Supreme Court stated: "[Conforming] to the principle that a liquor license is not a contract granting rights to be enjoyed however and wherever the whim of the licensee may suggest, it is uniformly held that a single license does not confer the right to conduct more than one place for dispensing liquor." 194 So. at. 627. The Florida Court cited Malkan v. Chicago, 217 Ill. 471, 75 N.E. 548 (1905), as leading authority on the subject. The licensee in Malkan was running two liquor establishments out of one building, one establishment in the basement and the other establishment on the first floor. Each establishment had a bar and all the equipment necessary for selling alcoholic beverages. Each establishment had a separate entrance, and there was no way to go from one to the other without going into the street. Under those facts, it was held that the licensee was operating two places of business, and therefore separate licenses for each establishment were required. On the authority of Malkan v. Chicago, the Florida Court in Long v. Capital Gardens interpreted its statutory language that every license "shall describe the location of the place of

business where such beverages may be sold and no such beverage shall be permitted to be sold except at said place of business" to require that each separate structure wherein a licensee engages in the sale of alcoholic beverages be licensed separately.

We find that the analysis in Long v. Capital Gardens and Malkan v. Chicago to be compelling and to comport with New Mexico's statutory scheme. Subsection 60-3A-3(L) allows a restaurant to dispense alcoholic beverages only within those areas customairily serviced by the restaurant and within a distinct, designated area. It is our opinion that, under the facts of the present inquiry, a separate license is required for each independent structure in which the licensee proposes to sell alcoholic beverages. The licensee's present license for the full service lounge may not be used as the license for the proposed full service restaurant to be located several hundred yards away in a different building.

Respectfully submitted,

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