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Opinion No. 88-04

OPINION
OF
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By: Scott Spencer
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To: Honorable Jack Stahl
Lieutenant Governor of New Mexico
Santa Fe, New Mexico 87503

QUESTION

Are vineyard owners who have a "grower's permit" prohibited by the Liquor Control Act, Sections 60-3A-1 et. seq., NMSA 1978, from selling wine by the bottle on Sunday in those local option districts that permit Sunday liquor sales?

CONCLUSION

No.

ANALYSIS

Section 60-6A-11 NMSA 1978 of the Liquor Control Act, Sections 60-3A-1 through 60-8A-19 NMSA 1978 (1987 Repl.), provides:

A. Exempt from the payment of any license fee or the procurement of any license under the terms of the Liquor Control Act, but not from the procurement of a "grower's permit" under rules to be prescribed by the director, is any person who is the lessee or proprietor of any vineyard, orchard, farm or apiary in this state who may make and sell at wholesale or retail the wine made from grapes, fruit or any other agricultural products grown in the vineyard, orchard, farm or apiary.

B. Any person granted a grower's permit pursuant to Subsection A of this section may conduct wine tastings and sell, by the glass or in unbroken packages, wine of his own production at public events on the premises. At no more than two off-premises locations, that person may conduct wine tastings and sell in unbroken packages for consumption off premises, but not for resale, wine of his own production after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department regulations for new liquor license locations.

C. Except as limited by Subsections C and D of Section 60-7A-1 NMSA 1978, sales of wine as provided in Subsections A and B of this section shall be permitted between the hours of 9:00 a.m. and midnight Monday through Saturday and, in local option districts in which Sunday sales are permitted, between the hours of 12:00 noon and 8:00 p.m. on Sunday.

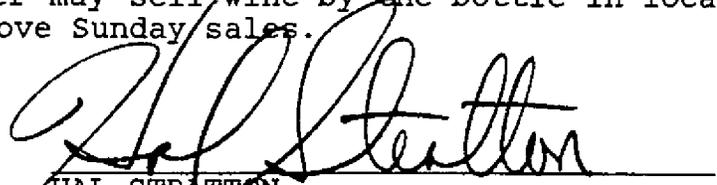
(emphasis added). This statute enumerates the privileges granted to a grower's permit holder ("permit holder").

The grower's permit authorizes lessees or proprietors of vineyards, orchards, farms, or apiaries to make limited sales of wine during designated hours. The holder of a grower's permit may therefore sell wine on Sundays only if Sunday liquor sales are permitted in his local option district, and the manner of Sunday wine sales, i.e., by the glass or bottle, is governed by Subsections A and B of Section 60-6A-11. Subsection 60-6A-11(B) states, in part, that "[a]ny person granted a grower's permit pursuant to Subsection A of this section may conduct wine tasting and sell, by the glass or in unbroken packages, wine of his own production at public events on the premises." Accordingly, permit holders may sell wine on Sundays, by the glass or the bottle, between the hours of 12:00 noon and 8:00 p.m. in local option districts that permit Sunday sales.

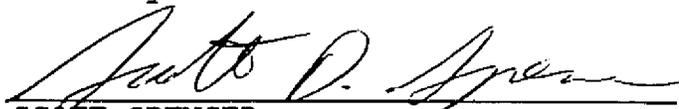
Subsections 60-7A-1(B) and 60-7A-1(E) state that alcoholic beverages may be sold on Sunday only "by the drink," and then only in local option districts which have approved Sunday sales. Section 60-7A-1 does not, however, apply to permit holders. Subsection 60-7A-1(A) states, in part, that "[a]lcoholic beverages shall be sold, served, delivered, or consumed on licensed premises [i.e., retailers, dispensers, canopy licensees, restaurant licensees, club licensees, and governmental licensees] only during the following hours and days." (emphasis added). Thus, according to

the language of Section 60-7A-1, the "by the drink" restriction was not intended to apply to permit holders. A statute means what it says. Southern Union Gas Co. v. New Mexico Pub. Service Comm'n., 82 N.M. 405, 407, 482 P.2d 913, 915 (1971). (Overruled on other grounds in DeVargas Sav. & Loan Ass'n. v. Campbell, 87 N.M. 469, 473, 535 P.2d 1320, 1324 (1975)).

Moreover, even if Section 60-7A-1 were construed to apply to permit holders, the language in 60-6A-11 would continue to control the manner of Sunday sales, because section 60-60-11 is more specific than section 60-7A-1. Conflicts between general and specific statutes are resolved by giving effect to the specific statute. Lopez v. Barreras, 77 N.M. 52, 54, 419 P.2d 251, 253 (1966). In addition, this construction would advance the apparent legislative intent of encouraging New Mexico's vineyard industry. The fundamental rule in construing statutes is to ascertain and give effect to the legislature's intention. State v. Chavez, 77 N.M. 79, 82, 419 P.2d 456, 457 (1966). It thus is this office's opinion that a permit holder may sell wine by the bottle in local option districts which approve Sunday sales.



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