

Liquor License, Transfer of. License, Retail Liquor. When Transferable. Commissioners, Power of Over Liquor License. Transfer, Liquor License in County Districts.

The county treasurer has no authority to transfer a liquor license from one place within the county to another place in the county, without the sanction of the Board of County Commissioners.

March 22nd, 1913.

Hon. Joseph McCaffery,
County Attorney,
Butte, Montana.

Dear Sir:

I am in receipt of your letter of the 14th instant, submitting the question:

"Can the county treasurer transfer a saloon license from one place within the county to another when the board of county commissioners has ordered the treasurer not to issue a new license or extend an old license for said other place?"

Generally speaking, the answer to this question must be in the negative, but it must also be understood that the board of county commissioners has no jurisdiction over license issued in incorporated cities and towns, but said board has jurisdiction in the original issuance of licenses in places not within incorporated cities and towns, and where protests are filed a re-newal of such license may be refused, but where a license in a country district is once issued to conduct a

"retail liquor business in the camp, village or township, the county treasurer shall issue"

a re-newal of such license

"without requiring a petition therefor, unless a protest against such issuance shall have been filed."

Sec. 3, House Bill No. 128, 13th Legislative Assembly.

Within these restrictions, the county board has discretion to determine. As you stated in your letter a similar question was one time discussed by this department and the opinion thereon reported in Opinions of Attorney General, 1910-12, p. 250.

The law relating to the issuance, transfer and negotiability of retail liquor licenses has been the occasion of considerable discussion, giving rise to a variety of opinions, caused by the various apparently conflicting legislative enactments, relating thereto. The closing paragraph of Section 2759 R. C. is:

“that all licenses provided for in this act shall be negotiable and transferable in the city or county where the same was issued.”

This addition to the liquor license law was made by the Act approved March 16, 1895, and prior to the time when there was no particular restriction regarding the issuance of licenses other than the payment of a fee therefor. It has been carried forward in subsequent laws not as a new enactment but as a continuation of the original act. The words “negotiable” and “transferable” as applied to negotiable instruments means “passed from hand to hand” rather than changing from one locality or place to another. The phrase “in the city or county” would rather indicate that it was the intention of the law-makers that these licenses might be transferred from one locality to another within the city or county, but if this was the original meaning, it has been modified by subsequent enactments, and must be now construed in the light of such subsequent modifications. The Act of March 3rd, 1905, confers upon the board of county commissioners certain powers and discretions relative to the issuance of licenses in certain places. This provision was carried forward and extended by Chapter 92, Laws of 1911, wherein among other things an additional restriction is found relating to the number of licenses which may be issued in incorporated cities and towns and making certain definite requirements to be complied with by those who desire licenses outside of incorporated cities and towns. House Bill No. 128 enacted into a law by the 13th Legislative Assembly, contains substantially the same restrictions for obtaining a retail liquor license in places not within the corporate limits of any city or town, but does not deprive the county board of the discretionary power vested in it by the provisions of Sec. 2761 R. C. Said House Bill No. 128 contains further provision where a license has been once granted to conduct a “retail liquor business in the same camp, village or township the county treasurer shall renew such license without requiring a petition therefor unless a protest against such issuance shall have been filed.”

Neither the provisions of Sec. 2759, nor of Chapter 92, Laws of 1911, nor of said House Bill No. 128, appear to confer any jurisdiction upon boards of county commissioners relative to the issuance of licenses for conducting retail liquor business within incorporated cities or towns, nor does there appear to be any discretion vested in the county treasurer except as he is restricted from issuing licenses for such business outside of incorporated cities and towns, and as he is probably further restricted by the provisions of Sec. 1 of House Bill No. 128, which limits the number of licenses in any city or town to one for every five hundred inhabitants. The petition filed for retail license outside of incorporated cities and towns must be signed by at least twenty freeholders

“residing within the particular village, camp or township in which such person seeking such license intends to engage in such business.”

The protest must also be signed by free-holders residing within such village, camp or township. Hence, the license, if issued can not extend beyond the boundaries of the particular village, camp or township for which it is issued, and the transferee of the license can acquire no greater rights than that possessed by the original holder.

In view of these provisions of the law and in addition to the considerations heretofore given this question by this department, and above referred to, I have reached the following conclusions:

1. A license for the conducting of a retail liquor business in an incorporated city or town, does not, so far as the state law is concerned, limit the transaction of such business to a particular locality within such city or town, but that the holder of the license may transfer his business from one place to another within such city or town, but not outside of the same, and of course the party to whom he sold the license would have the same privilege, but governed, of course, by the provisions of the law, which prohibit the sale of liquor in certain designated localities and subject also to regulations and restrictions legally imposed by such city or town.

2. Where the petition for or the order of the county board authorizing a license for the conducting of a retail liquor business not within the corporate limits of any city or town, does not contain any restrictions as to the locality, such license may be transferred from one part of the village, camp or township to another part of the same village, camp or township, but not outside of the same, but where the petition for the license or the order of the board authorizing the issuance of the license confines it to a particular designated place, as a lot, block or street in a village, camp or town or a certain cross-roads or section corner in a country district, it cannot be transferred to any other place, but the business, if conducted at all must be at the particular place to which operation of the license is so restricted. The order of the board authorizing the license is based upon the petition filed therefor and the license issued is based on the order of the board. Both the petition and the order of the board are jurisdictional. The order cannot be more extended than the petition, though it may be more restricted, nor can the license issued on the order be greater in territorial extent than the order on which it is based. The discretion vested in the board is broad enough to authorize the board to restrict the operation of a license to a particular place.

Very truly yours,

D. M. KELLY,
Attorney General.