

Opinion No. 95.

Interdiction—Justice Courts.

HELD: Interdiction proceedings under Chapter 2, Title 4, R. C. M., 1947, may be instituted in justice court as well as in the district court.

September 24, 1954.

Mr. Robert T. Pantzer
County Attorney
Park County
Livingston, Montana

Dear Mr. Pantzer:

You have requested my opinion upon the following question:

"Most proceedings for interdiction, under Chapter 2, Title 4, R. C. M., 1947, be instituted only in the district court, or may they also be instituted in justice court?"

You have informed me that an order of interdiction has been made in your county and that the Liquor Control Board declined to file the order, in conformity with 19 Opinions of the Attorney General 396, No. 243, which held that all interdiction proceedings must be instituted in the district court.

It appears upon examination, that Opinion No. 243, supra, is not a correct statement of the law. The applicable statutes are Sections 4-201, 4-203 and 4-204, R. C. M., 1947. The pertinent portions of these sections provide:

"4-201. Interdiction—Order Of—Effect—Disposal Of Liquor Of Interdicted Person. (1) Where it is made to appear to the satisfaction of any court that any person, resident or sojourning within the state, by excessive drinking of liquor, misspends, wastes, or lessens his estate, or injures his health, or endangers or interrupts the peace and happiness of his family, the court may make an order of interdiction directing the cancellation of any permit held by that person, and prohibiting the sale of liquor to him until further order; and the court shall cause the order to be forthwith filed with the board.

"* * * " (Emphasis supplied.)

"4-203. Revocation Of Order Of Interdiction—Restoration Of Rights. The court by whom an order of interdiction is made under this Act, upon being satisfied that the justice of the case so requires, may revoke the order of interdiction by an order filed with the board; and upon the filing of the order of revocation, the interdicted person shall be restored to all his rights under this Act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations." (Emphasis supplied.)

"4-204. Application And Setting Aside Order of Interdiction—Restoration Of Rights—Notice Of Applica-

tion. (1) Upon the application to the judge of any district court by any person in respect of whom an order of interdiction has been made under this Act, and upon it being made to appear to the satisfaction of the judge that the circumstances of the case did not warrant the making of the order of interdiction, or upon proof that the interdicted person has refrained from drunkenness for at least twelve months immediately preceding the application, the judge may by order set aside the order of interdiction filed with the board, and the interdicted person shall be restored to all his rights under this Act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations.

"(2) The applicant shall, at least ten clear days before the application, give notice thereof to the board, in writing, served upon the board and to such other persons as the judge may direct."

Section 4-201, supra, which provides for the making of interdiction orders in the first instance, specifies that the order may be made by any court. Although the punishment specified by the section is restraint of the person in a manner usually applicable only to equitable actions, the proceeding is not of an exclusively equitable nature so as to place it within the ban upon equity proceedings in justice courts of Article VIII, Sec. 21 of the Montana Constitution. (See *Mettler v. Adamson*, 38 Mont. 198, 99 Pac. 441.)

Section 4-203, supra, provides for revocation of the order by the court which made it. The only one of these sections which is restricted to proceedings in district court is 4-204, supra, which in effect provides for an appeal to the district court from an order previously made. This was the interpretation of these sections by the Supreme Court in the case of *State v. Wiles*, 98 Mont. 577, 41 Pac. (2d) 8. In that case the court said:

"Sections 67 to 70 of Chapter 105, above, deal with the subject of 'Interdiction' of any person who, by

reason of excessive drinking * * * misspends, wastes, or lessens his estate' and for 'summary' conviction of such a person who, after interdiction, has liquor in his possession. Reference here is merely to the 'court,' but, as such a case is not before us, we need not determine whether or not such proceedings must be brought in a justice's court; however, the Act itself would indicate that the intention was that it should be, as Section 70 in effect provides for an appeal to the district court from the order of interdiction."

It is apparent that Opinion 243, *supra*, incorrectly interpreted the statutes and the case of *State v. Wiles*.

It is, therefore, my opinion that interdiction proceedings may be instituted in justice court as well as in the district court.