

Liquor Dealer, Engaging in Business of on the Line of any Railroad Grade, Logging Camp, Etc.

Under the express provisions of Chapter 39, Laws 1905, amending Section 717, Penal Code, said law does not apply to the selling or furnishing or giving away of intoxicating liquors within the limits of any town or city, even though such town or city may be essentially a logging or saw mill camp.

Helena, Montana, Oct. 20, 1905.

W. T. McKeown, Esq., County Attorney, Kalispell, Montana.

Dear Sir:—I am in receipt of your favor of the 3rd instant, asking opinion of my office relative to the construction of Section 717, of the Penal Code, as amended by Chapter 39, Laws of 1905, p. 76.

You say that at the town of Somers, which is an incorporated town, having a population of 1000, there are four saloons, and that endeavor has been made to have you prosecute the saloon keepers and put them

out of business under said law. The question is, whether or not the law is applicable?

Said Section 717, Penal Code, as amended, reads as follows:

"Every person who sells, furnishes or gives away any spirituous or malt liquors, wine or cider or any beverage containing any intoxicating liquors within five miles of the line of any railroad grade, logging-camp, saw-mill, sheep-shearing camp, irrigation ditch or canal in course of construction, or on any railroad grade on which track is being laid, is punishable by imprisonment in the county jail, not exceeding sixty days, or by a fine not exceeding one hundred dollars, or both.

The provisions of this section do not apply to the selling, furnishing or giving away of intoxicating liquors, wine or cider within the limits of any town or city."

If said Section 717, as amended, did not contain the second paragraph it would undoubtedly be applicable to the town of Somers, and, in all likelihood, to the City of Kalispell, and many other like towns and cities. But by the express provisions contained in said second paragraph the law is made not to apply to the sale of liquors within the limits of any town or city. Somers is unquestionably a town or city, within the meaning of said second paragraph, and I am therefore of opinion that the law does not apply.

This law was intended to prevent retail liquor dealers from following up temporary camps of men engaged in the various employments named in the act for the purpose of providing them with liquor.

Respectfully submitted,

ALBERT J. GALEN,
Attorney General.