

**Licenses. Liquor Dealers.**

Chap. 71, Laws of 1905, apply exclusively to retail, rather than wholesale, liquor dealers engaged in selling spirituous, malt or fermented liquors or wine, in cities, towns, villages or camps where the population is less than 100.

Helena, Montana, June 6th, 1906.

S. V. Stewart, Esq., County Attorney, Virginia, City, Montana.

Dear Sir: I am in receipt of your favor of the 29th ult., making request for opinion of my office upon the following question:

"Do the provisions of Chapter 71, Laws of 1905, apply to persons who, in a city, town, village or camp, having a population of less than 100, engage in the business of selling spirituous, malt, or fermented liquors or wine, in quantities of not less than one quart."

The law in question is clearly not applicable to such persons, for by its express terms it is made to apply only to retail liquor dealers; that is, persons who sell liquors in quantities of less than one quart. The law mentions retail liquor dealers only, and apparently, for fear that there might be doubt as to the intention of the lawmakers, a retail liquor dealer is defined in the Act as "a person who sells spirituous, malt, or fermented liquors or wine in less quantities than one quart", and as the law nowhere prohibits the wholesale liquor dealer from engaging in business in towns, cities or camps having a population of less than 100, I know of no means by which he can be prevented.

However, a person cannot be permitted to evade the law by securing a wholesaler's liquor license and selling liquors in wholesale quantities to be consumed by his patrons on his premises. Whether a man is engaged in the wholesale or retail liquor business is a question of fact to be determined from the evidence respecting his methods of selling liquors. If a license is given a person to conduct a wholesale business and it thereafter be ascertained that he is, in fact, retailing, he should be punished for conducting a retail liquor dealer's business without the license prescribed by law, and in the event that his place of business is in a town, city, or camp, having a population of less than 100, he could likewise be subjected to the provisions of said Chapter 71, laws of 1905.

This opinion is given you confidentially and not for publication, as it would seem desirable to prevent evasion of the law. In order to make Chapter 71, Laws of 1905 thoroughly operative, and to prevent evasion, I think the next legislature should pass a law prohibiting the issuance of licenses to wholesale liquor dealers in towns, cities, or camps having a population of less than 100.

Yours respectfully,

ALBERT J. GALEN,  
Attorney General.