

**Saloon Licenses, Manufacturers and Wholesale Dealers in Malt. Licenses, Manufacturers and Wholesale Dealers of Malt. Licenses, Determining Population For; Census Is Basis for Determining License.**

Section 4063, as amended by Chapter 82, Laws 1905, does not repeal by implication the license provided for in Section 4068, as amended by the Laws of 1897.

The population upon which the amount of the license is based can only be determined by the United States census, or by census taken by the city or town in accordance with law.

Helena, Montana, Oct. 9, 1907.

Hon. T. E. Collins,  
State Examiner  
Helena, Montana.

Dear Sir:—

Your letter of September 30th, received, in which you request an opinion upon the following proposition:

Does Section 4063 of the Political Code, as amended by Chapter 82, Laws 1905, repeal by implication the following clause of Section 4068, as amended by the laws 1897, page 198, to-wit: "Every wholesale dealer in malt liquors exclusively, where the same are sold in quantities of more than four gallons, shall pay a license of seventy-five dollars per annum."

You are advised that Section 4063, as amended by said Chapter 82, Laws of 1905, fixes the license for persons selling spirituous, malt, vinous, distilled or fermented liquors or wines, and every person selling any of the above liquors and wines must pay such license unless he belongs to one of the classes of persons coming within the provisions of Section 4068 as amended by the Laws of 1897.

In order to come under the provisions of said Section 4068 he must be either a brewer or manufacturer of malt liquors who sells in quantities of more than four gallons, or, he must be a wholesale dealer in malt liquors exclusively, and must sell in quantities of more than four gallons. It is very apparent from the amendments of Section 4063 and Section 4068, as amended by the Laws of 1897, that the legislature intended to put brewers and manufacturers of malt liquors and wholesale dealers in malt liquors exclusively, who sell in quantities of more than four gallons, in separate classes from dealers who sell liquors under Section 4063, and the amendment of Section 4063 found in Chapter 82 of the Laws of 1905, is no more in conflict with Section 4068 than was Section 4063 before the last amendment. So it is apparent that the Legislature intended to retain the same distinction that was made in the amendments to Section 4063 and 4068 by the Act of 1897.

Your second question submitted as follows: Liquor, and several other licenses are graded according to the population of the city, town or village in which the business requiring the license is conducted.

How is the county treasurer to determine the population upon which to base the amount of such license.

We know of no provisions whereby the county treasurer is authorized to take the census of the city or town in order to determine the population. In our opinion he should take the last official United States census as his basis, unless such city or town pursuant to Division 77 of Section 4800 of the Political Code, as amended by the laws of 1897, page 212, has caused the official census of such city or town to be taken, in which event he would be authorized to use such census as his basis for determining the amount of license to be collected from persons doing business therein.

Very truly yours,

ALBERT J. GALLEN,

Attorney General.