

Licenses, Wholesale Liquor at Railroad Camps. Liquor Licenses, Prohibited at Railroad Camps, Etc. County Treasurer, Issuing Licenses at Railroad Camps.

Chapter 65, Laws 1907, makes it a misdemeanor to sell or give away any liquors, regardless of quantity, at the points and places mentioned in such law. The County Treasurer is therefore justified in refusing to issue liquor licenses at such places.

Helena, Montana, Nov. 2, 1907.

Thomas Nelson Marlow, Esq.,
County Attorney,
Missoula, Montana.

Dear Sir:—

I am in receipt of your favor of October 30th, asking opinion from this office respecting the duty of the county treasurer to issue applicants a license for the conduct of a wholesale liquor dealers business at the town of Taft in your county, and the resulting protection or benefit, if any, to such a licensee.

From your statement, it appears that Taft is a new town established by the contractors engaged in the construction of a line of the Chicago, Milwaukee and St. Paul Railroad company, and that said town had no existence or population whatsoever until the work of the construction of said road was actually commenced at that point, or within five miles distant thereof.

In answering your question it is not necessary to take into consideration or discuss Chapter 71, Laws 1905 and the applicability of its provisions to the case presented, as Chapter 65, Laws of 1907, seems to fully cover the case. Having read and now applying the provisions of said Chapter 65, Laws of 1907, I am of the opinion that the treasurer should not issue a license for the sale of liquor, either at wholesale or retail for such camp of Taft, because, by said law, the selling, furnishing or giving away of any spirituous or malt liquors, wine or cider or any beverage containing intoxicating liquors is not only expressly prohibited, but made punishable as a misdemeanor. The town or camp having been established since the work of the construction of the railroad commenced clearly falls within the class of towns enumerated in said Chapter 65, Laws of 1907, without regard to its present population. It may be that the county treasurer is not vested with judgment or discretion in a case of this kind to refuse to issue a wholesale liquor dealer's license, but it is certain that such a license would be of no protection to one charged with a violation of the law last above referred to. If a license were issued for the wholesaling of liquors at said town, the applicant would receive and accept same charged with full knowledge of the provisions of this law prohibiting the sale of liquors at such camp, and the possession of a license from the treasurer would not be available as a defense.

While it is true that the treasurer's act in issuing a license is

more or less ministerial, yet he is chargeable with knowledge of the law, and I believe his position correct in refusing to issue a license for the conduct of a business by the law prohibited, more particularly so when the treasurer is in possession of facts enabling him to apply the law. Mandamus may issue against the treasurer upon the ground that he has no discretion in the premises, but this should in no way effect your action in strictly enforcing the provisions of Chapter 65, Laws of 1907; and, in the event any such license is issued and business actually thereafter conducted by the license, I should advise you to institute and vigorously prosecute cases for each and every offense committed against the provisions of such Chapter 65, Laws of 1907, and to not consider or accept as a defense, the possession by the offender of such a license

Yours very truly,

ALBERT J. GALEN,

Attorney General.