

**Liquor License, Saloon Business on Line of Railroad Grade.**

Under the provisions of Chapter 39, Laws of 1905, it is unlawful to issue a saloon license for the conduct of a retail liquor dealers' business in any town or city on the line of a

railroad in course of construction unless such town or city is unincorporated.

Helena, Mont., February 2, 1907.

Thomas Nelson Marlowe, Esq.,  
County Attorney,  
Missoula, Mont.

Dear Sir:—

I am in receipt of your favor of the 11th inst., submitting for opinion of this office the question of the effect of the provisions of Chapter 39, Laws of 1905, with reference to the issuance of retail liquor licenses for the conduct of a saloon business in unincorporated cities and towns located on the line of a railroad grade in course of construction.

The law above referred to is exclusively a police regulation and we can do nothing but apply its plain language without reference to the effect thereof.

It has been repeatedly held that statutes prohibiting the sales of intoxicating liquors in certain localities are not in violation of any state or federal constitutional provision; provided they apply equally to all persons within the territorial limits prescribed in the statute.

See 17 Enc. of Law, 2nd Ed. 214.

And it has even been held that statutes prohibiting the sale of intoxicating liquors within designated distances of churches and colleges, orphan asylums, etc., are constitutional.

See reference above given and cases cited.

In construing the application of this statute, all we can do is to apply the meaning of the language therein contained, and upon the question by you presented we must first determine what is a town or city within the meaning of the law.

The provisions of said Chapter 39, Laws of 1905, make positive prohibition against the sale of "Any spirituous or malt liquors, wine or cider, or any beverage containing any intoxicating liquors" in any of the places named in the chapter, with the proviso that the provisions of this section do not apply "within the limits of any town or city."

This Act is an amendment of Section 717 of the Penal Code, and neither in the original section, nor in the amendment, do we find any definition of what is a town or city. The only statute we have been able to find defining a town or city is Section 4710 of the Political Code, which, after defining the various classes of cities, reads "every municipal corporation having a population of three hundred and less than one thousand is a town," consequently, under the provisions of the section quoted above, "a town or city" cannot be a municipal corporation unless incorporated. The concluding clause of section 4720 of the Political Code reads "No municipal corporation must be formed unless the number of inhabitants is three hundred or upwards." The phrase "town or city," as used in the law under consideration, must, therefore, have reference to a place having three hundred or more inhabitants and which is incorporated.

It is true that sections 3230 to 3236 of the Political Code relating to fire departments uses the phrase "unincorporated city, town or village," but Chapter 71, Laws of 1905, relating to licenses, uses the phrase, "cities, towns, villages or camps where the population is less than one hundred," but such places are not municipal corporations, hence are not towns or cities within the meaning of said section 4710 of the Political Code. Unless, therefore, the places to which you refer are incorporated cities or towns as defined in said section 4710 of the Political Code, they come within the meaning of Chapter 39, Laws of 1905.

A license is not a contract between the state and the person licensed, but is merely a permit to do something which without it would be unlawful. They form a portion of the internal police system of the state, are issued in the exercise of its police power and are subject to the discretion of the state government, which may modify, revoke, or continue them as it may deem fit.

See 17 Enc. of Law, 2nd Ed. 230.

Therefore, it would be improper for your county to issue licenses for the conduct of retail liquor dealers' businesses on the line of any railroad grade in course of construction or on which track is being laid, for the legislative will is supreme with respect to such police regulation, and it is not for us to enquire into the equity of the law, but merely to construe and apply it as we find it.

Persons applying for licenses or making investments in saloon property must do so with full knowledge of the law as it exists, and of the right of the legislature to modify or change it at will.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.