

Licenses, Retail Liquor at Railroad Camps. Liquor Licenses Prohibited Along Railroad Where Track Is Being Laid.

A town which does not contain a population of thirty or more persons who have resided therein for six months does not

come within the exception stated in the second paragraph of Section 717 of the Penal Code, and no person can be legally licensed to engage in the liquor traffic in such town.

Helena, Montana, Jan. 30, 1908.

Hon. Roy E. Ayres,
County Attorney,
Lewistown, Montana.

Dear Sir:—

I am in receipt of your favor of the 9th inst., in which you submit for the consideration of this office the following question:

“Do the provisions of Chap. 65, Session Laws of 1907, which prohibits the sale of intoxicating liquors within five miles of certain works, mean that no saloon can be established within a platted town which is within five miles of some works enumerated in Chap. 65 but which said town is not of the population, and not of the age, as is required under Chap. 65?”

Section 717 of the Penal Code, as amended by said Chap. 65, Laws 1907, contains in the first paragraph thereof a complete and sweeping prohibition against trafficking in intoxicating liquors within five miles of certain works, among which are railroad grades “or any railroad grade upon which track is being laid or within five miles of any * * * mine,” etc.

The second paragraph of this section enumerates two exceptions, and provides that the act shall not apply to cities or towns, and the word “town” or “city” is defined as being a place having “not less than thirty persons over the age of twenty-one years residing within the territory not exceeding one mile square” exclusive of persons engaged in any of the business or on any of the works enumerated in the first paragraph of the section, or who have not resided in such places for six months.

The second exception excludes from the provisions of the act “persons previously engaged in selling intoxicating liquors at a fixed place of business established six months prior to the beginning of the work.” etc. These are the only exceptions which are made to the prohibitions contained in the first paragraph of the section and we cannot add any others thereto. The question propounded by you must therefore be answered in the affirmative; that is, that the provisions of said Chap. 65 do apply to all towns within the five miles limit as named in the first paragraph of the section, which towns are not of the age or do not contain a population sufficient to bring them within the exception named in the second paragraph.

Of course, a person charged with selling liquor in such places might justify under the second exception; that is, that he had been engaged in the liquor traffic at a fixed place of business for six months “prior to the beginning of work in or upon the erection or construction or operation of any of the things enumerated in” the said chapter. This same section has been heretofore considered by this office and the same

conclusions reached in an opinion given to the county attorney of Missoula County, on November 2, 1907.

Very truly yours,

ALBERT J. GALEN,

Attorney General.