

Railroad Grade, Selling Liquors on.

Chapter 65, Laws of 1907, prohibits the selling of liquor only on railroad grades under course of construction or on which track is being laid, and does not apply to the roadbed of a railroad which has been completed and in actual use.

Helena, Montana, April 19, 1907.

Hon. John L. Slattery,
County Attorney,
Glasgow, Montana.

Dear Sir:—

Your letter of the 9th inst., requesting opinion of this office received, the question submitted being as follows:

“In this county we have several villages with a railroad running directly through them. They are not incorporated, although some of them are townsites. The question has arisen as to whether or not Chapter 39, Acts of 1905, page 76, apply to such villages so as to prohibit the county treasurer from issuing licenses to retail liquor dealers in such places. I am assuming that the words ‘the line of any road grade,’ mean the roadbed of a railway company in actual use.”

Chapter 39 of the laws of 1905 was amended by Chapter 65 of the laws of 1907, Said law, as amended, provides that:

“Every person who sells, furnishes or gives away any spiritous or malt liquors, * * * within five miles of any railroad grade * * * under course of construction, or on any railroad grade on which track is being laid * * * is punishable by imprisonment, etc.”

Said law further provides that it shall not apply to the selling,

furnishing or giving away of intoxicating liquors within the limits of any town or city which has a bona fida permanent population of not less than thirty persons over the age of twenty-one years residing within the territory not exceeding one mile square, and excluding from such enumeration all persons who have not resided at least six months in such place and also excluding all employees, owners or agents engaged in the liquor business.

The law further provides that the act shall not apply to any person previously engaged in selling intoxicating liquors at a fixed place of business established six months prior to the beginning of work in or upon such railroad grade. From the language used in said act it is apparent that it was not intended to apply to towns, villages, etc., along the line of the railway which had been completed and was in actual use, but only applies to railroad grades under course of construction or on which track is being laid. Your attention, however, is called to Chapter 71 of the laws of 1905, which provides that:

"The county treasurer shall not issue a license to a retail liquor dealer in cities, towns, villages or camps where the population is less than one hundred unless a petition shall first be filed and presented to the board of county commissioners signed by at least twenty freeholders, etc."

For a construction of this law you are hereby referred to Opinions of Attorney General, 1905-'06, pp. 66, 92, 129, 176, 298, 317, and 349.

Very truly yours,

ALBERT J. GALEN,

Attorney General.