

Saloon, Location of Near Schools. Schools, Location of Saloons in the Vicinity of. Educational Institutions, Saloons located near.

The provisions of Chapter 90, Laws of 1909, prohibiting saloons within two thousand feet of educational institutions does not include public schools and county free high schools.

Helena, Montana, July 13, 1909.

Hon. Thomas Dignan,
County Attorney,
Glasgow, Montana.

Dear Sir:

I am in receipt of your letter of July 6th requesting an opinion upon the following question:

"Do the provisions of Chapter 90, laws of 1909, which prohibit the establishment or maintenance of saloons within two thousand feet of any state educational institution of the state of Montana apply to public schools of a county."

Under our laws there are two classes of schools in this state: one being the state educational institutions supported from land grants made by congress and by appropriations made out of the general fund of the state; the other being the public common schools of the various counties and the free county high schools which are supported by the counties and the school districts of the various counties and the grants of sections 16 and 36 in each township.

Art. X., section 1, of the state constitution provides for the establishment of educational institutions to be supported by the state, and article XI., section 1 of the constitution authorizes the legislature to establish a system of public free common schools. Section 2 of article XI., of the constitution provides that the control and supervision of the "state educational institutions" shall be vested in the state board of education. Section 648 of the revised codes defines the powers and duties of the state board of education, and says it shall have the general control and supervision of the State University and the various "state educational institutions." This section was amended by Chap. 73, laws of 1909, and section 1 of this chapter names the various "state educational institutions" of the state.

On the other hand the legislature provided, by sections 807 and 824 of the revised codes, that the general supervision of the public schools of the state shall be vested in the state and county superintendents of schools. Section 911 of the revised codes defines a common school to be one "that is maintained at public expense, in each school district and under the supervision of the board of trustees," and the law creating county free high schools provides that they shall be under the control of a board of trustees from the county and their expense shall be maintained by the county.

The above review of the statutes shows clearly that the term "state educational institution" has a technical and limited meaning in our

statutes and refers only to these institutions of learning established and supported by the state as distinguished from those established and maintained by the various school district or counties of the state.

You are therefore advised that said chapter 90 of the laws of 1909 applies only to the state educational institutions mentioned in subdivisions 1, of section 1, of chapter 73, laws of 1909.

Yours very truly,

ALBERT J. GALEN,

Attorney General.