

**Liquor Licenses, Applications for Outside of Cities and Towns.
County Commissioners, Authority Over Liquor Licenses Outside of Cities and Towns.**

The only case in which the Board of County Commissioners are given power to authorize, or refuse to authorize, the issuance of a license is where the population of the place is less than one hundred. In all other cases the applicant for a license may go direct to the county treasurer.

The commissioners have no authority to revoke a liquor license except in cases where the population is less than one hundred. In all other cases the license can only be revoked where the person holding same has been convicted of violating the law relating to gambling or to the sale of intoxicating liquors.

Helena, Montana, February 2, 1909.

Hon. J. H. Stevens, County Attorney, Kalispell, Montana.

Dear Sir:

I am in receipt of your letter of January 25, in which you request an opinion upon the following propositions:

“What authority, if any, has the board of county commissioners to require that applications for retail liquor licenses for saloons located outside of the corporate limits of incorporated cities and towns be approved by the sheriff and county attorney to the effect that the ‘win room law,’ and other laws, are not being violated therein, before the license is issued by the County Treasurer?”

“Are applications for licenses required from only saloons in cities, towns, etc., where the population is less than one hundred, or from all saloons in the county, or just those outside of incorporated towns?”

Sections 2760 to 2762, of the Revised Codes of Montana, relate to the issuance of liquor licenses in cities, towns, villages or camps, where the population is less than one hundred. As no town or city can be incorporated unless there is at least a population of three hundred, these sections, in effect, apply only to unincorporated places of less than one hundred population.

Section 2761 gives the boards of county commissioners full authority to issue or refuse to issue a license to run a saloon in a place of less than one hundred, even where a petition signed by twenty freeholders has been presented. (See *State v. Settles*, 34 Mont. 451.) Therefore, as the commissioners have this unlimited authority it is within their power to make rules declaring what showing they will require before they will permit the county treasurer to issue such a license, and therefore would have the right to provide that the sheriff or county attorney must investigate and report as to whether the wine room law, gambling law, or other

laws, are being violated before they exercise their authority of directing that a license be issued.

Section 2762, giving the Board of County Commissioners power of supervision and control over persons engaged in the selling of liquors, and also power to revoke licenses theretofore issued, applies only to licenses provided for in sections 2760 and 2761, as the section expressly states that,

"It shall be lawful for the board of county commissioners of any county, who are authorized to issue an order for a license for the sale of intoxicating liquors, under the provisions of this act, * * * to revoke any license granted under the provisions of this act."

It will be noticed that the only case in which the Board of County Commissioners are given the power to authorize, or refuse to authorize, the issuance of a license is where the population of the place in which the business is to be conducted is less than one hundred. In all other cases the applicant for a license may go direct to the County Treasurer, and upon payment of the necessary license fees, procure a license, and the only authority of law that we know of, by which such a license can be revoked is that provided for by Section 2757, to the effect that,

"The conviction of any person for violation of the law in relation to gambling, or the sale of intoxicating liquors, is a revocation of the license to such person."

Upon such a conviction the commissioners would have authority to revoke a license granted to engage in the liquor business in cities or towns, or outside thereof.

Nothing in the foregoing opinion should be construed as giving either the Board of County Commissioners or the County Treasurer authority to grant a liquor license to engage in the saloon business in violation of the provisions of Sections 8555 and 8556 of the Revised Codes of Montana, for the County Commissioners or County Treasurer have no authority to take an applicants money and grant him a license to engage in the liquor business in a place where the law absolutely prohibits the carrying on of such business, for such a procedure would be, in effect, a repeal of the state law.

Very truly yours,

ALBERT J. GALEN,

Attorney General.