

° **Saloon, Near Railroad Grade in Course of Construction. Railroad in Course of Construction, Selling Liquors Near.**

Any person who has been engaged in the sale of intoxicating liquor at a fixed place of business for six months prior to the beginning of work upon a railroad grade within five miles of

such place of business, comes within the exception mentioned in Section 8555, Revised Codes, and may sell liquor to employees on such railroad grade.

The mere making of a survey, or doing preliminary work in order to determine where the grade will be located, is not a construction of the grade within the meaning of Section 8555, Revised Codes.

Sept. 20, 1910.

Mr. J. C. Huntoon,
County Attorney, Fergus County,
Lewistown, Mont.

Dear Sir:—

I am in receipt of your letter of September 17th, requesting an opinion upon the following proposition.

“The Milwaukee Railroad is building from this city to Melstone running through Forest Grove and Grassrange in this county. The survey has been made and the work begun but they have done no work within five miles of Grassrange. A short time ago they ceased work upon the line and will not resume until the first of April. A party is desirous of obtaining a license to run a saloon at Grassrange and the question is presented to me, if a license is granted before October 1st., will he come under the exception named in Section 8555, which section prohibits the granting of licenses within five miles of railroads under course of construction—under six monthss clause.”

Section 8555, Revised Codes, prohibits the selling of intoxicating liquors within five miles of any railroad grade, under course of construction, or upon which track is being laid, with the exceptions named in the section.

The last exception provides that the section 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, or in the erection or construction or operation of such railroad grade.

Under the question presented by you, it appears that work has been commenced upon the grade, but not within five miles of the point where the individual wishes to engage in the saloon business.

In our opinion, the exception above named means that any person who has been engaged in the sale of intoxicating liquor at a fixed place of business for six months prior to the beginning of work upon the railroad grade within the five mile limit, would come within the exception; and that the mere making of a survey, or doing preliminary work in order to determine where the grade will be located would not be the construction of the grade within this section.

Therefore, if a license is granted to the individual desiring same, and he is engaged in selling liquors at an established place of business for six months prior to the beginning of work upon the grade within five

miles of his place of business, he would come within the exception; but if not so engaged for six months prior to the beginning of work upon the grade within such limit, he would not be entitled to sell intoxicating liquor within the meaning of this section and his license would not in that case protect him.

I take the liberty of calling your attention to the provisions of Sec. 2760, Revised Codes, with reference to obtaining a license for the sale of intoxicating liquors in villages and camps where the population is less than one hundred. You will note that it is necessary for such person desiring to obtain a license to file with and present to the board of county commissioners a petition signed by at least twenty freeholders residing within the particular town, village or camp in which any person seeking such license intends to engage in business, requesting the issuance of such license to such person; and the board may, in their discretion, thereupon direct the county treasurer to issue the license, but not otherwise. Such license may also be revoked by the board of county commissioners as provided by Section 2762, Revised Codes.

I regret to say that your letter of September 7th was misplaced by me, owing to rush of work, and was not called to my attention until the receipt yesterday of your letter of the 17th.

In reply thereto, I enclose a copy of an opinion rendered to Mr. Harry L. Wilson, under date of June 6th, 1910, which I believe covers the question propounded by your letter. However, if there is any additional information you wish regarding the question therein contained, I shall be glad to furnish same upon request.

Yours very truly,

ALBERT J. GALEN,
Attorney General