

License, Liquor on Railroad Grade. Saloon, License of on Railroad Grade. Railroad Construction, Saloon Within Five Miles.

A license may not be issued for the conduct of a saloon within five miles of a railroad grade in course of construction or where railroad track is being laid.

Helena, Montana, March 4, 1909.

Hon. W. S. Towner, County Attorney, Fort Benton, Montana.

Dear Sir:

I have your letter of February 26, wherein you ask my opinion as to whether or not Section 8555 of the Revised Codes of Montana is sufficiently broad in its terms to cover the selling of liquors within five miles from the point upon which road-way work is being done on a railroad. You allude in your letter to the particular case concerning which your inquiry is made, being the Teton tunnel, on the Great Northern Railway.

This statute has been construed by this office in several opinions, which will be found in the reports of official opinions of the Attorney General. In those reports of 1905-06, at page 223, you will find an opinion rendered to W. T. McKeown, and in the volume of 1906-'08 you will find opinions at pages 179, 225 and page 21. These opinions, however, relate in the main to cases of new construction of railroads. However, in my opinion, the bill is broad enough to cover repair work of some kind at least. For example: In the case of floods, where stretches of track and grade are washed out, the necessary reconstruction of the grade and the laying of the track would bring that class of work within the purview of Section 8555 of the Revised Codes.

While we are not able to tell the exact nature of the work being done now at Teton tunnel from your statement of facts, it seems fair to assume that a grade will have to be made, and, perhaps, a new track laid at the point; and, if so, the work at that point would, in my opinion, be the sort of work contemplated by Section 8555.

The spirit of the law, as I interpret it, is to prevent the issuance of saloon licenses to persons who intend to use them only temporarily at points where large numbers of men are employed, who form a transient, local population during the period required for the construction of railroad work, or of saw mill or logging operations.

The facts of the Teton tunnel seem to me to fall within the spirit of the law, and I believe that the provisions of Section 8555 would cover the facts existing there.

Very truly yours,

ALBERT J. GALEN,

Attorney General.