

Saloon License, Outside of Incorporated Limits. Liquor License, Outside of Incorporated Limits.

A person engaged in the saloon business outside the incorporated limits of a town must present a petition to the county commissioners before he is entitled to such a license unless the collection of houses immediately surrounding his proposed place of business, not including those within the incorporated town, contain more than one hundred inhabitants.

Helena, Montana, March 13, 1909.

Hon. W. L. Ford, County Attorney, White Sulphur Springs, Montana.

Dear Sir:

I am in receipt of your letter of March 11, in which you request an opinion upon the following propositions:

The town of Harlowton is platted and incorporated, and contains a population of more than one hundred inhabitants. There are some lots platted which are outside the incorporated limits of the town, but contiguous thereto. On one of such lots the Graves Hotel is situated. Is it necessary for the proprietor of said hotel to present a petition to the Board of County Commissioners, in accordance with Section 2760 of the Revised Codes and procure an order from the board before the Treasurer is authorized to issue to him a retail liquor dealer's license.

You also state that the city council has passed an ordinance limiting the number of saloons in the town of Harlowton.

In our opinion a person residing outside of the incorporated limits of a town must present a petition to the County Commissioners, as provided in said Section 2760, unless the village, or collection of houses immediately surrounding his proposed place of business, contain over one hundred inhabitants without including any of those living within the limits of the incorporated town.

In your letter you refer to two opinions heretofore given by this office, and found on pages 129 and 317 of the Opinions of Attorney General of 1905-06. The facts upon which these opinions were given are

clearly distinguishable from those stated above. In the opinion given on page 129 the town was not an incorporated town, and we held that the simple fact of a part of it having been platted would not change the general rule of determining the population of an unincorporated town, and that therefore all people residing in such proximity to the place of business as to be properly a part of the village could be included in determining the population. Also, in the opinion found at page 317, we were discussing the method of determining the inhabitants of a village or unincorporated town. But in the case you present the town is incorporated, and, in our opinion, the limits of the town must be determined upon the boundaries of the territory included within the incorporation, and that any person residing outside of such limits cannot be considered as an inhabitant of such town.

Any other construction would result in the following contradictory position; namely, the person desiring to open a saloon would first claim that he was not living in the town, and therefore exempt from the provisions of the ordinance limiting the number of saloons in the town; and, in the next instance, he would be claiming that he was living within the town, which had over one hundred inhabitants, and therefore entitled to a license without first petitioning the Board of County Commissioners. We do not believe the law can be juggled in this manner.

You are therefore advised that the person living outside the limits of an incorporated town, who desires to open a saloon, must petition the Board of County Commissioners for his license, unless the population of the particular village outside of the incorporated limits has over one hundred inhabitants.

Very truly yours,

ALBERT J. GALEN,

Attorney General.