

Liquor License, License to Retail Liquor. Saloons, Issuance of License. County Commissioners, Authority With Reference to Issuance of Liquor License. County Treasurer, Duty With Reference to Issuance of Liquor License.

The provisions of Chapter 92, Laws of 1911, limit the number of licenses to be issued within the corporate limits of a city or town. The issuance of licenses outside the corporate limits of a city or town is entirely within the discretion of the board of county commissioners.

August 12, 1911.

Hon. H. S. Greene,
County Attorney,
Great Falls, Montana.

Dear Sir:

I am in receipt of your letter of the 5th inst., enclosing copy of an opinion rendered by you to the county commissioners of your county in construction of Chapter 92, Laws of 1911, and in which letter you ask my official opinion as to the authority of a board of county commissioners to issue licenses for the sale of intoxicating liquors in communities outside of the corporate limits of cities and towns; and I note from your opinion enclosed with your letter that you have advised your board of commissioners as follows:

"It is the opinion of this office that you may do so and there is no limit under the law binding the county treasurer in the issuance of licenses for the sale of liquor save and except the order of the county commissioners, in cases where the application is outside of an incorporated city or town; and this limitation is a matter of discretion with the county commissioners."

With your conclusion, as above stated, I concur.

Section I, of Chapter 92, Laws of 1911, is as follows:

"That it shall be unlawful for any county or city in this state to issue more than one license for more than five hundred (500) inhabitants in any city or town to any retail liquor dealer, etc."

A city or town under the laws of Montana has a well defined meaning, the definition for the same being prescribed by the provisions of Section 3202, of the Revised Codes of 1907, and Section 3206, of said Code, which prescribed the rule for distinguishing between the different classes of cities and towns. These sections are general provisions and

were in existence at the time of the enactment of Chapter 92, Laws of 1911.

"All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it." (36 Cyc 1146).

Section III of said Chapter 92, provides:

"Every person who desires to engage in the business of a retail liquor dealer in any place not within the corporate limits of any city or town must obtain a license, etc."

Then follows a general provision for the procedure to be followed by such applicant providing for the number of signatures, to a petition, for the notice to be given by the County Clerk, for the hearing and for the consideration of any protests that may be filed against the issuance of such license. From the strict wording of Section I, it is apparent and it is my opinion that that section applies exclusively to incorporated cities or towns. The language of that section is not in any manner ambiguous or uncertain, and further, in view of the provisions of Section III, above quoted, and providing for the issuance of a license not within the corporate limits of a city or town, leads to the conclusion that Section I applies exclusively to such cities or towns. The provisions of Section I not being applicable to communities outside the limits of a city or town, for the provisions relating to such communities we must look to said Section III and this section contains no limitations upon the number of licenses that may be issued by the board of county commissioners in any particular village, camp or township, but the issuance of such licenses and the number issued in any particular place, is left exclusively to the sound discretion of the board of county commissioners.

It is therefore my opinion that there is no limit to the number of licenses that may be issued by a board of county commissioners in any place not within the corporate limits of any city or town, and that the opinion you rendered to your board of county commissioners with reference thereto, is a proper interpretation of said chapter 92, laws of 1911.

Very truly yours,
ALBERT J. GALLEN,
Attorney General.