

License, Brewers and Manufacturers of Malt. Brewers, License of Branch Establishment. Liquors, License to Brewers and Manufacturers of Malt.

Brewers or manufacturers of malt liquors are required to pay the license provided for by Section 2770, Revised Codes, which license must be procured immediately before the commencement of business. A separate license must be obtained for each branch establishment or separate house of business in the same county.

August 17, 1911.

Hon. C. E. Kumpe,
State Examiner, Helena, Mont.

Dear Sir:

I am in receipt of your letter of the 14th inst., requesting my official opinion upon the following question:

"The Garden City Brewing Company of Missoula, which manufactures and sells malt liquors and pays a license for so doing at Missoula, has a warehouse at Plains, in Sanders county, with a man in charge of the warehouse. The brewing company ships liquor to this warehouse in car-load lots. The saloon keepers of Plains and vicinity order liquor from the man in charge of the warehouse, and he fills and delivers the orders, and sends the bills to the brewing company at Missoula, which does the collecting. Is the brewing company liable for a license in Sanders county?"

In reply I will say that Sec. 2770, Revised Codes, provides that every brewer or manufacturer of malt liquors who sells malt in quantities of more than four gallons is required to pay the license therein provided. If they sell malt liquor in quantities of less than four gallons, they would be required to pay the license provided by Section 2759, Revised Codes.

Section 2749 provides that a license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same and separate licenses must be obtained for each branch establishment or separate house of business in the same county.

Of course, if the brewing company conducts a branch establishment in Sanders county, or in any other county, it would be subject to pay a license for such branch establishment.

The question here presented is whether or not the Garden City Brewing Company is maintaining a branch establishment in Sanders county. Upon the statement of facts above presented, it appears that the company maintains a warehouse at Plains, and that the person in charge of the warehouse receives orders from saloon keepers there and fills the same from the warehouse direct, although the collecting is done at Missoula, and presumably the accounts are kept there. In my opin-

ion this would constitute a branch establishment which would be as much subject to pay a license as the home establishment at Missoula. If they take and fill orders from the warehouse, it is a branch establishment of the Missoula concern, no matter where the collecting is done or the accounts are kept.

See *Murrell v. Bakenhorf* (La.) 32 So. 176.

However, a change in the facts might alter the result. If the warehouse is maintained at Plains simply for the purpose of convenience, and all orders are sent directly to Missoula by the patrons of the Garden City Brewing Company, and the company simply fills these orders as they come in from the warehouse at Plains as a matter of convenience, and no orders are taken at the warehouse, the warehouse would not constitute a branch establishment, and would not then be subject to a license.

Yours very truly,

ALBERT J. GALEN,

Attorney General.