

Licenses—Saloon, Transfer Of. Saloon License, Transfer Of.

Neither person to whom a saloon license is issued, nor his assignee, can transact business under such license at any place than the place for which it was issued. The license only authorizes the party obtaining the same to transact business in that particular town, city or locality for which the license was issued.

August 25, 1911.

Hon. Charles T. Cotter,
County Attorney,
Townsend, Montana.

Dear Sir:

Yesterday you requested, by telephone, my official opinion upon the following statement of facts:

Upon June 30th, 1911, "A" procured a license from the county treasurer of Broadwater county, to conduct a saloon at Townsend, an incorporated town having a population of about eight hundred. He did not open a saloon at Townsend, or any other place under this license, and now desires to open up a saloon at Radersburg, an unincorporated town of between three and four hundred inhabitants, or to sell or transfer the license to some one else to open a saloon at that place. The question is, may he do so?

Under the provisions of Section 2759, of the Revised Codes, every person who sells, or offers for sale, any spirituous, malt, or fermented liquors must obtain a license therefor from the county treasurer. The amount which he is required to pay for the license is graduated according to the population of the place where the liquors are to be sold. The Section further provides:

"That all licenses provided for in this act shall be negotiable and transferable in the city or county where the same are issued."

Section 2749, of the Revised Codes, 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, which license authorizes the party obtaining the same in his town, city or particular locality in the county, to transact the business described in such license, * * * *"

In construing that portion of Section 2759 which permits a transfer of the license in the city or county where the same is issued, we must do so in the light of Section 2749, above referred to, which section, in my opinion, limits the transfer of the license to the town, city, or particular locality for which the license was originally issued. The person to whom the license is transferred certainly could not enjoy any greater privileges than the person to whom the license was originally

issued and he is undoubtedly limited in conducting the particular business for which the license was issued, to the town, city, or particular locality for which it was issued. This construction of Section 2759 is further supported by reason of the fact that the amount to be paid for the license is graduated according to the population of the city, town, or locality in which the licensee intends to carry on business. If one license extends to the boundaries of the county, then they all do, and a person could obtain a license in a city or town having a population of one thousand and engage in business, or transfer the license to some one else to engage in business, in a town having a population of ten thousand, where the amount to be paid for the license would be much greater. In my opinion, under the provisions of this section, the transfer of the license is limited to the particular town, city, or locality for which the license was originally issued.

By the provisions of Section 1, Chapter 92, Session Laws of 1911, it is made unlawful for any county or city in this state to issue more than one license for every five hundred inhabitants in any city or town, to any retail liquor dealer. In an opinion of this office, addressed to Hon. H. S. Greene, county attorney of Cascade county, under date of August 12th, 1911, it was held that this section applies only to incorporated cities and towns. By the provisions of Section 3, of said chapter, 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 from the county treasurer, but before the county treasurer shall permit the issuance of the license, a petition shall first be filed and presented to the board of county commissioners as therein provided, and the issuance of the license by the treasurer, depends upon the final decision upon the petition.

Section 2, of the act, provides as follows:

"This act, in so far as it limits the issuance of licenses for the sale, or offering for sale, of spirituous malt or fermented liquors, or wine, shall not affect any person, company or corporation now regularly licensed, nor the party to whom such license may be transferred, to sell, or offer for sale, any spirituous, malt or fermented liquors, or wine, or the re-issuance or transfer of a license to such persons in accordance with existing laws upon this subject."

Under my interpretation of this section, while the act does not take effect until the first day of July, 1911, Section 2 thereof refers to the time of its approval, and not to the time when the act takes effect, and therefore, if this section of the act has any application at all and is not in violation of the state constitution, it applies only to any person, company or corporation, regularly licensed at the time of its approval, to-wit, March 4th, 1911. Any other construction of this section would permit persons to stock up with licenses for speculative purposes between March 4th and July 1st, and thereby defeat the very purpose of the act.

Furthermore, although it appears that this license was obtained

prior to July 1st, yet the transfer thereof not being made until after the first of July, and this transfer being a contract or agreement would be made with reference to the law as it existed at the date of the transfer, and not with reference to the law as it existed when the license was originally obtained.

You are therefore advised that the person to whom the license in question was issued, cannot transact business under such license at any other place than the place for which it was issued and that his assignee would be in no better position. You are further advised that if the town of Radersburg is not an incorporated town, any person desiring to conduct a saloon there, may make application to the board of county commissioners, as provided by Section 3, of Chapter 92, Session Laws of 1911, and if leave is granted by the board, the treasurer will issue the license.

Very truly yours,

ALBERT J. GALEN,

Attorney General.