

**Liquor License. Retail Liquor Dealer, Who Is. License,
Retail Liquor. Wholesale Liquor License.**

A retail liquor dealer strictly speaking is one who sells liquor in less quantities than one quart.

The only wholesale liquor license provided for in our law is that of a dealer in malt liquors and who sells in quantities of more than four gallons.

Any person selling liquor must first obtain the liquor license therefor and the license for selling in quantities of one quart is the same as the license for selling in quantities of less than one quart.

Sept. 11, 1911.

Hon. P. E. Allen,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I am in receipt of your letter of August 30, requesting my official opinion upon the following questions:

1. "Is a party who sells liquor in quart bottles a retail liquor dealer?"
2. Can a 'wholesale' liquor license be collected in this state?"

Under the provisions of Section 2759, every person who sells or offers for sale any spirituous, malt, or fermented liquors must obtain a license from the county treasurer before commencing business. The amount of the license is graduated according to the population of the place where the liquors are to be sold.

Section 2770 of the Revised Codes requires every brewer or manufacturer of malt liquors, who sells malt liquors in quantities of more than four gallons, to pay a license graduated according to the amount of his sales. If he should deal in or sell other liquors than malt manufactured by himself, he will be required to pay the license specified by Sec. 2759.

Section 2770 also provides that

"Every wholesale dealer of malt liquors exclusively, where the same are sold in quantities of more than four gallons shall pay a license of seventy-five dollars per annum."

This provision of the section applies to any person not a brewer or manufacturer, who sells malt liquors exclusively in quantities of more than four gallons, and is the only provision pertaining to a wholesale liquor license in our statutes.

Sec. 1, of Chap. 92, Session Laws of 1911, makes it 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; that is, a person who sells spirituous, malt, or fermented liquors, or wine, in less quantities than one quart; and Sec. 3 of the same act provides that every person who desires to engage in the business of a retail liquor dealer (that is, a person who sells spirituous, malt, or fermented liquors, or wine, in less quantities than one quart) 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 such license, a petition must be filed as required by the section.

A retail liquor dealer, for the purpose of Section 2760 of the Revised Codes of 1907, and Chapter 92, Session Laws of 1911, is defined to be a person who sells spirituous, malt or fermented liquors, or wine, in less quantities than one quart, but there is no provision in our statutes whereby the county treasurer can issue an exclusively retail liquor license. If a person should obtain a license to sell liquors under the provisions of Section 2759 and did not sell in less quantities than one quart he could not be convicted of violating the provisions of Chapter

92, Session Laws of 1911, nor the provisions of Section 2760, et seq., Revised Codes of 1907, because he would not come within the terms of these enactments, but I know of no way in which the treasurer could issue him a license to sell liquors in quantities of one quart or more. Every person who sells liquor must obtain a license before commencing business and the license in every instance is provided for by Sections 2759 and 2770 of the Revised Codes but the manner of obtaining a license in certain instances is provided for by Chapter 92, Session Laws of 1911.

With the above explanation, in answer to your first question, I will say that for the purpose of Sec. 2760, Revised Codes of 1907, and Chapter 92, Session Laws of 1911, a retail liquor dealer is a person who sells spirituous, malt, or fermented liquors, or wine, in less quantities than one quart; and in answer to your second question I will say that the only wholesale license I know of is that provided for by Section 2770, Revised Codes of 1907, providing that "every wholesale dealer in malt liquors exclusively, where the same are sold in quantities of more than four gallons, shall pay a license of seventy-five dollars per annum."

Yours very truly,

ALBERT J. GALEN,

Attorney General.