

Conviction for Violating Liquor Law, Effect of. Gambling, Conviction of, Effect on Liquor License. Liquor License, Effect on Conviction of Gambling.

Conviction of a person for a violation of the law in relation to gambling is not an automatic revocation of the liquor license of such person.

Helena, June 23rd. 1913.

Hon. Vard Smith,
County Attorney,
Livingston, Montana.

Dear Sir:

Replying to your request of recent date, wherein you inquire whether or not the conviction of a person of a violation of the law in relation to gambling is a revocation of the liquor license of such person, I beg to submit the following:

Sec. 2757 of the Revised Code provides as follows:

"Sec. 2757. License, How Revoked.—The conviction of any person for a violation of the law in relation to gambling or the sale of intoxicating liquors, is a revocation of the license of such person."

It is well to note in the beginning that this section is a part of the Code of 1895, being Sec. 4051 of such code. It is also true that this section adopts as a part of itself, to the same extent as though written therein, the law existing at that time relating to gambling, and to the sale of intoxicating liquors. However, the rule is well settled that where one statute adopts another, "such adoption takes the statutes as it exists at the time of the adoption, and does not include subsequent additions or modifications of the statute so taken unless it does so by express intent."

Lewis' Sutherland Stat. Const. Sec. 405.

U. S. v. Paul, 6 Peters 140, 8th Lawyers' Ed. 348.

It follows, therefore, that Sec. 2757 adopted for its operation the gambling law as it existed in 1895, but did not adopt future legislation upon the same subject. The gambling law of 1895 has been repealed and we now have a much more comprehensive statute upon the same subject, making certain acts crimes which were not crimes under the act of 1895, and prescribing different penalties. It seems apparent, therefore, that the present gambling law cannot be said to be a part of and to have been incorporated in Sec. 2757, as under the rule above quoted future legislation upon the same subject is not adopted.

I think, also, it may well be argued that Sec. 2757 has been repealed by the provisions of Chap., 35, Laws of 1913. The title of the act follows:

"An act limiting the number of licenses which may be issued for the sale of intoxicating liquors and regulating the issuance of licenses, and providing for the revocation of licenses upon conviction of a penal offense * * *."

It would appear from this title that the legislature intended to provide fully for the revocation of a liquor license upon conviction of a penal offense. Sec. 4 of the same act provides:

"That upon a conviction of any person engaged in the business of a retail liquor dealer for a penal offense against the laws of the State of Montana, occurring in the place of business of such person, and relating to such business, such

person shall be punished in accordance with existing laws upon the subject, except as hereinafter provided."

Then the act goes on to provide that upon a second conviction the license shall be suspended for a period of three months, and that upon a third conviction the person convicted shall not be entitled to any license for the sale of liquors.

In my judgment, it is apparent from the title and the body of the act that the legislature intended by the enactment of Sec. 4 above referred to, to revise the existing laws relative to the revocation of liquor licenses upon conviction of a penal offense, and to specify the penal offenses, a conviction of which would operate as a revocation of the license, and if the legislature had intended to retain the provision providing for a revocation of license upon a conviction of gambling, the legislature would have so stated in Sec. 4.

For the reasons above stated, I am of the opinion that the conviction of a person for a violation of the law in relation to gambling is not an automatic revocation of the liquor license of such person.

Yours very truly,

D. M. KELLY,
Attorney General.