

**Liquor License, Not to Be Issued to Alien. Alien, Must Not Be Issued a Liquor License.**

Under the provisions of Chap. 116, Laws of 1913, a liquor license must not be issued to any person not a citizen of the United States.

Where a license has been issued by a county treasurer to an alien through mistake he should be formally notified that he is not qualified to hold the license and requested to return it, and should he fail so to do, the license should be revoked.

December 3rd, 1913.

Hon. George R. Allen,  
County Attorney,  
Virginia City, Montana.

Dear Sir:

I am in receipt of your letter submitting for my consideration the question

“As to the validity of a liquor license issued by the county treasurer within an incorporated city to a person not a citizen of the United States.”

We agree with you in your conclusion that the county treasurer did not have authority under the facts to issue the license in question. The provisions of Chapter 116 of the Session Laws of 1913, contain a positive prohibition that no licenses shall be issued to any person not a citizen of the United States. This, I take it, applies to all licenses, not merely to those which the commissioners order issued, for we cannot construe a law in such a manner as to make it void when any other construction can be given to it. A law which au-

thorizes licenses to be issued to foreigners within an incorporated city and forbids its issuance to like persons outside of such incorporated cities would, to say the least, be pressing the limit, and probably would be held void, as an unjust classification. Said Chapter 116 does not assume to classify licenses, or the persons to whom they may be issued, further than to contain the prohibition that no license shall be issued to one not a citizen. It must be kept in mind too that the board of county commissioners do not issue licenses, hence the proviso in this section has reference to the county treasurer and not the board. The case considered by this department and referred to by you (Opinions of Attorney General, 1910-12 at page 267) is little different in its facts from the case you present. There, the treasurer had exceeded his territorial jurisdiction, hence his mistake in that case was a mistake of law which we know is not any excuse, but in the present case the mistake is one of fact. From the equity standpoint this may make some difference, but from the strictly legal standpoint it can make but little difference, for the plaintiff to whom the license was granted is presumed to know the law, and he did know that he was not a citizen. However, to avoid any doubt in the matter, and also to give the holder of the license his day in court, I would suggest that he be formally notified that he is not qualified to hold the license, and requested to return the same. If he returns his license, the treasurer may then revoke it. If he does not immediately return the license for revocation, an action should be instituted against him for the purpose of revoking, annulling and setting aside the license so issued, alleging, of course, the necessary facts.

Under the provisions of Sec. 2669, Revised Codes, the county commissioners are given authority to make refund of taxes, per centum and costs erroneously or illegally collected, hence to secure the return of the unused part of the license the plaintiff should file his claim against the county and let the same be audited and passed upon by the board. The board may then inquire into the good faith and any other question that may arise, and issue its order according to the right of the case.

Yours very truly,

D. M. KELLY,  
Attorney General.