

**License, Liquor. Liquor, Sale of in Places Other Than Saloons.**

There is no way by which a county treasurer may issue a license to sell liquors in quantities of one quart or more.

Brewers and manufacturers of malt liquors must pay a license according to the amount of his sales.

The only license which can be issued for the sale of spirituous liquors in any quantity, whether of one quart or more, is the regular retail liquor license.

December 5th, 1913.

Hon. T. F. Shea,  
County Attorney,  
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your communication of the 29th ultimo, submitting for my opinion the following questions:

"1. As to whether or not a license can be issued in this state for the sale of spirituous liquors in quantities of one quart or more.

"2. If such a license can be issued, what is to be the amount of it?

"3. What would be the rule relative to the sale of malt liquors?

"4. Does the statute limiting the number of saloons apply to places of business selling liquors in quantities of one quart or more?"

As you have noted in your letter, this subject was considered in an opinion to P. E. Allen, county attorney at Red Lodge, Montana, and reported in Vol. 4 of Opinions of Attorney General, p. 265. As was laid down in that opinion, there is only one wholesale liquor license provided for by our code—that is, the license required of dealers in malt liquors, who sell in quantities of more than four gallons. There is no provision of our code providing for a license for selling of spirituous liquors in quantities of one quart or more, and I am of the opinion that a person wishing to deal in spirituous liquors in this manner would be under the necessity of obtaining a license as provided for in Sec. 2759, Revised Codes of Montana of 1907. The apparent inconsistency between the syllabus paragraph at the head of the opinion and that portion of page 267, reading as follows:

"I know of no way in which the treasurer could issue him a license to sell liquors in quantities of one quart of more,"

Is eliminated when we consider that the only wholesale license is that required of persons dealing in malt liquors, under the provisions of Sec. 2770. The idea which was intended to be conveyed there was that there was no method by which a county treasurer could issue a license to sell liquors in quantities of one quart or more exclusively. It naturally follows that if no license for the selling of spirituous

liquors in quantities of more than a quart can be issued, no amount can be collected therefor. This, I think, answers your first two questions.

The rule in regard to the sale of malt liquors is laid down in the opinion above referred to on page 266, where it is held that every brewer or manufacturer of malt liquors who sells malt liquors in quantities of more than four gallons must pay a license, graduated according to the amount of his sales. This refers to a wholesale business and license therefor. If the dealer sells malt liquors in less quantities than four gallons, that is at retail, he would be required to pay the license provided for in Sec. 2759. What has been said above, I think, disposes of your fourth question, for if the license to sell liquors in quantities of one quart or more is the same as that required of persons selling in quantities less than one quart, such persons would be in the same class, and therefore the limitations imposed by law upon the number of saloons would apply as well to them as to other persons. In this connection it is to be noted that Chap. 35 of the Session Laws of the Thirteenth Legislative Assembly provides in part as follows:

"It shall be 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 liquor dealer, that is a person who sells spirituous, malt or fermented liquors or wine, in less quantities than one quart."

An attempt is made here to make a distinction between persons selling liquors in less quantities than a quart and those who sell by the quart or more, a distinction not made or recognized in the law relating to licenses; and in as much as no person may sell liquors without a license, and no license is provided for persons selling liquors in quantities of a quart or more, a person attempting to do so would be without the law. Hence, the only liquor license which can be issued for sales of spirituous liquors in any quantity is the regular retail liquor license, and the provisions of Chap. 35 of the Thirteenth Legislative Assembly Laws, would apply to such licenses, and limit the number of places at which liquor could be sold.

Yours very truly,

D. M. KELLY,  
Attorney General.