

**Liquor License, Renewal of. Renewal, Liquor License.
License, for Liquor Renewal.**

The holder of a liquor license granted under authority of county board must renew the same at the expiration of the original license, if renewed at all.

January 27th, 1914.

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

Dear Sir:

I am in receipt of your letter of the 13th instant, submitting the question:

"Relative to the time within which a liquor license issued by permission of the county board may be renewed."

As you state in your letter, Sec. 3A, Chap. 35, Session Laws of 1913, provides:

"Whenever the holder of any liquor license shall desire a renewal thereof to conduct such retail liquor business in the same camp, village or township, the county treasurer shall issue such license without requiring a petition therefor, unless a protest against such issuance shall have been filed."

This provision of the statute when considered alone seems to be mandatory and without limit as to time, but further on, in the same section, it is provided that a protest against the issuance of such renewal must be filed "at least twenty days previous to the day of the expiration of such license." After that time no protest may be filed, hence if a license is once issued for a period of six months

and a protest is not filed twenty days prior to the expiration of that time, no protest could ever thereafter be filed, and the party to whom the original license was issued, unless restricted as to time could at any time thereafter, even after a lapse of years, compel the issuance to him of a renewal license, although conditions in the vicinity may have been wholly changed. That is, the people residing in the vicinity would be wholly powerless, unless those who reside there at the time within which the protest might be filed had actually filed the protest. I cannot accept this as the proper construction of this law, for if we held that an interval may exist between the expiration of the original license and the issuance of the renewal license, then there is no way by which the duration of that interval may be measured. If the party may delay for a month, by the same rule he might delay for a year, and if he may delay for a year by the same rule he may delay for two years. Where the license has actually expired and no renewal thereof has been had, the party necessarily ceased the business, and I am inclined to the belief that where he once ceases business at the expiration of his license, the license and all rights acquired thereunder, including the right to renewal, becomes *functus officio*. Of course, there is nothing in the law to compel the party holding a license to conduct a saloon business, but he cannot conduct the business unless he has the license, and if he voluntarily permits the license to expire without a renewal, and does not renew the same at the time, he stands on the same footing as one who had not theretofore received the original license.

It is, therefore my opinion that the renewal of the liquor license should be co-existent with the expiration of the original license.

Yours very truly,

D. M. KELLY,
Attorney General.