

Liquors, Liquor License. Commercial Companies, Dealing in Liquors.

Where a commercial company holds a license for the sale of liquor as provided in Section 2759, Revised Codes of Montana, it is not under the necessity of obtaining the \$75 license mentioned in Section 2770, Revised Codes of Montana, 1907. Brewing companies dealing in beer not manufactured by themselves, but imported from another state, in quantities of four gallons or more, must pay the \$75 license provided for by Section 2770, R. C.

February 14th, 1914.

Honorable Board of County Commissioners,

Lewistown Montana.

Gentlemen:

I am in receipt of a communication, under date of the 5th instant, signed by Charles D. Allen of your board and submitting for my consideration the question:

"As to whether a commercial company holding a wholesale liquor dealer's license, third class, is required to pay the \$75 license provided for in Sec. 2770, in addition to the other license?"

I assume that the wholesale liquor dealer's license, third class, mentioned by you, is the regular license provided for by Sec. 2759, in as much as there is no such thing, strictly speaking, as a whole-

sale liquor dealer's license; that is, no such license is provided for by our code and nowhere is authority given to issue other licenses than those mentioned in Secs. 2759 and 2770. The license mentioned in Sec. 2759 is a license to sell all manner of liquors, and contemplates the sale thereof in any quantity suiting the holder of the license. The \$75 license provided for in Sec. 2770 contemplates the sale of malt liquors exclusively at wholesale in quantities of four gallons or more. From the facts as assumed in your letter it appears that the commercial company mentioned by you does not deal exclusively in malt liquors, but that it is engaged in the general sale of all sorts of liquors—malt, vinous and spirituous. I am, therefore, of the opinion that such a firm would not be under the necessity of obtaining the \$75 license mentioned in Sec. 2770, since that refers to a dealer in malt liquors exclusively.

In regard to the question of whether a brewing company which pays the annual brewer's or manufacturer's license mentioned in Sec. 2770 must also pay the \$75 license mentioned by that section, for the reason that they deal also in beer not manufactured by themselves, but which is made outside of the state I am of the opinion that such a firm dealing in beer, or malt liquor, other than that of their own manufacturing, must pay the \$75 license mentioned in Sec. 2770. It is to be noted that the first part of the section, 2770, provides for a license proportioned to the sales of the manufacturer or brewer. It is essentially a license to manufacture, the amount of the license being governed in accordance with the amount of the product sold. The other license mentioned in that section is strictly a wholesaler's license, not dependent upon any quantity sold but merely a license to deal in such products. The mere fact that the company which wholesales beer manufactured without the state is in the brewing business puts them in no different position than any other commercial organization which happens to include malt liquor in the products handled by it.

Yours very truly,

D. M. KELLY,
Attorney General.