

Intoxicating Liquors, License to Sell. License, to Sell Intoxicating Liquors. Issuance of License, to Sell Intoxicating Liquors.

In a town having a population of ten people the county commissioners have jurisdiction to entertain an application for a liquor dealer's license, but may not issue it if within territory prohibited by Sec. 8555, Rev. Codes.

August 11, 1914.

Hon. F. R. Cunningham,
County Clerk and Recorder,
Lewistown, Montana.

Dear Sir:

I am in receipt of your letter of the 8th inst., as follows:

"The Board of County Commissioners instructs me to request an opinion from you on the matter of a petition for a retail liquor license, in a townsite adjacent to but not a part of the incorporated city of Lewistown, the facts as submitted to the board are as follows:

"There are two saloons within half a mile of the proposed site;

"The Chicago, Milwaukee & St. Paul roundhouse is within 200 yards;

"The Chicago, Milwaukee & St. Paul tracks, is within 100 yards, the track is said to be still under construction;

"There is also a stone quarry within half a mile of the proposed site;

"The population of the townsite known as South Lewis-town is less than ten people;;

"There are only two buildings in the town, both of which are residences.

"The Board desires to know whether or not they would be justified in refusing to issue a license under these circumstances?"

In reply, will say that I am of opinion that the board of county commissioners has jurisdiction to entertain an application for a liquor license under the procedure outlined by Sec. 3 of Chap. 35 of the laws of the Thirteenth Legislative Assembly. However, your attention is directed to Sec. 8555 of the Revised Codes of 1907, which prohibits the selling, furnishing, or giving away of spirituous or malt liquors, wine or cider, or any beverage containing any intoxicating liquors within five miles of any railroad grade on which the track is laid, or within five miles of any stone quarry. The section, however, does not apply within the limits of any town or city having a bona-fide permanent population of not less than thirty persons over the age of twenty-one years residing within the territory not exceeding one mile square, and excluding from such enumeration all persons who have not resided at least six months in such place.

In view of the foregoing I am of opinion that under the statement of facts as submitted by you, the board of county commissioners may not grant a petition for a liquor license at the place specified.

Yours very truly,

D. M. KELLY,
Attorney General