

Saloon Licenses, Number. Licenses, Number of. County Commissioners, Jurisdiction of to Issue Saloon Licenses.

Only one saloon license may be issued for each 500 of population of a town, but two licenses may issue for any town. Where two licenses are in force the County Commissioners are without further jurisdiction.

October 2, 1914.

Hon. H. C. Patterson,
Chairman, Board of County Commissioners,
Dillon, Montana.

Dear Sir:

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

"Several years ago, one Chas. Truax owned a hotel in Lima this county, (a town of about 300 inhabitants); in connection with this hotel he also run a saloon.

"About six years ago he leased the hotel and saloon to A. S. Beardsley for a term of, I believe, five years, at the expiration of the lease, on taking possession of the property, Beardsley refused to turn over to him (Truax) his right to the saloon license, but continues to renew said license and conduct the saloon under the same. The town has three saloons, two of them being on platted ground and one of them upon unplatted ground. Truax's ground is unplatted ground but has always been recognized as a part of the town. He has presented a regular petition. Can we under these conditions order the county treasurer to issue Truax a retail liquor license?"

By the provisions of Section I, Chapter 35, Session Laws of the 13th Legislative Assembly, it is made unlawful for any county or city in this state to issue more than one liquor license for every five hundred inhabitants in any city or town to any retail liquor dealer—provided that any city or town may issue licenses to two saloons, and provided also that the word "towns" as used in the act shall mean any town or village whether incorporated or unincorporated. I note what you have to say in regard to the Truax property; that it is upon unplatted ground, but has always been recognized as a part of the town. The mere fact that the ground has not been platted, can make no difference, for the prohibition of the 1913 Act referred to, nevertheless, applies. For a discussion of the significance of the word "town", see State ex rel. Powers vs. Dale, 47 Mont. 227.

You are, therefore, advised that you are without jurisdiction to order the county treasurer to issue Mr. Truax a liquor dealer's license, so long as two licenses remain in force for the territory of which Mr. Truax's property is a part.

Yours very truly,

D. M. KELLY,
Attorney General.