

Liquor License, County Commissioners, Liquor License Ordered by. License, for Selling Liquor.

The board of county commissioners has no authority to issue a wholesale liquor license or to order issued a wholesale liquor license.

March 19th, 1913.

Hon. R. S. Steiner,  
County Attorney,  
Big Timber, Montana.

Dear Sir:

I am in receipt of your letter submitting the question:

“What, if any, jurisdiction has the board of county commissioners for the issuance of a liquor license, where the liquor is not sold in less quantities than one quart?”

Neither Sec. 2769, R. C., nor Chap. 92, Session Laws of 1911, nor House Bill No. 128, Laws of 1913, appear to confer any jurisdiction upon the board of county commissioners in the issuance of licenses for the sale of liquor in quantities of one quart or more. In all those various acts, the term "in less quantities than one quart" appears, but the party desiring to sell in quantities of one quart or more must obtain a license required by Sec. 2759, R. C. The only strictly wholesale license we have in this state is that provided for in Sec. 2770, relating to the sale of malt liquors in quantities of more than four gallons. Neither does the law appear to restrict the authority of the county treasurer to issue licenses, except in those cases where the action of the board of county commissioners is necessary; that is, in places outside of incorporated cities and towns.

Neither does the law contain any restriction relative to where the liquor sold may be consumed. However, if a person obtaining a license without the consent of the board of county commissioners, sells liquor in quantities of less than one quart, or resorts to any subterfuge such as selling by the quart and then charging additional for serving the same, or selling by the quart and then charging rent on the room or glasses used in the consumption of the liquor, or resorts to any other subterfuge, he is guilty of retailing liquor without a license, and his license in such case would be no protection to him. I fully realize that this is opening a wide door which may be taken advantage of by persons desiring liquor license, but it is the statute and we are powerless to change it. This question has been many times before this department, and the opinions rendered therein have not been given wide publication, in the hope that the legislature might change the law, but no change in this respect has been made.

See Opinions of Attorney General, 1905-06, pp. 348, 349.

Also various opinions in the Opinions Attorney General for 1910-12, indexed under the head of "Liquor Licenses."

See also State v. Settles, 34 Mont. 448.

Very truly yours,

D. M. KELLY,

Attorney General.