

Saloons, Restaurants in. Restaurants, in Saloons. Closing Hours, of Restaurants in Saloons. Place of Business, Defined.

Under the closing laws now in force, every room or place where intoxicating liquors are dispensed must be closed during the hours prescribed by law, irrespective of the fact that such rooms or places are used for restaurant or other purposes.

April 10, 1915.

Hon. Frank Hunter,
County Attorney,
Miles City, Montana.

Dear Sir:

I am in receipt of your letter of the 3rd inst., setting forth that several of the saloons in Miles City have a restaurant in connection

with the saloon business, and one saloon exists as a part of the lobby of a hotel, and you desire my opinion as to whether or not the doors of these places may be left open to permit people to pass to and from the restaurants.

Senate Bills, No's. 62 and 63, Laws of 1915, regulate the hours during which saloons shall remain closed. The word "saloon" appears in the title of both bills, but is not used in the body of either Act. "Place of business" is the phrase used. These laws are analogous to the Nevada Statute. In *Ex Parte Livingston*, 21 Pac. 322, the Supreme Court of Nevada treats the phrase "place of business" as synonymous to "saloon," and it is in this sense the phrase must be regarded under our laws. In the Nevada case, the court said:

"The truth is that the character of the place to be closed is to be determined by the kind of business transacted therein.

In this respect we are of the opinion that the Act is not and was not intended to be any broader than the title."

The language of the law is, therefore, that "saloons" shall be closed during the prescribed periods. The word "saloon" has been defined as follows:

"A large public room or parlor; publicly a public room for specific uses, especially a bar-room, or grog shop; as a drinking saloon."

Webster.

"The popular idea associated with the word 'saloon' is that it is a room rather than a building with several rooms."

Malkan v. Chicago, 2 L. R. A. (n. s.) 488, 217 Ills. 471; 75 N. E. 548.

"A liquor license is not a contract granting the licensee rights he is entitled to enjoy wherever he pleases, but it is a permit only which must be strictly construed, and the one who holds it acquires only the privileges which a strict interpretation of the statute authorizing the issuance of the license will afford."

Note to *Malkan v. Chicago*, *Supra*.

See also *City of Clinton v. Gruesendorf*, 80 Ia. 117.

That the legislature intended that the entire room or place where intoxicating liquor is dispensed should be and remain closed during the prohibited hours is manifested by the following language of Section 1 of Senate bill No. 63 (Sunday Closing Law):

"and during the hours when said places are closed the curtains and screens of the doors and windows shall be open and notice shall be placed upon the front door that such place is closed."

It is now generally, if not universally regarded that traffic in intoxicating liquors is inherently unlawful and may be carried on only under such regulations and restrictions as the legislature may see fit to impose and prescribe.

In re *O'Brien*, 29 Mont. 530.

State v. Baker, 92 Pac. (Ore.) 1076.

In the latter case the Oregon Supreme Court used the following language:

"The right to engage in the sale of intoxicating liquors is not one of the privileges guaranteed to the citizen by the state or federal constitution. It is a business attended with danger to the morals of the community, and may, therefore, be entirely prohibited or permitted by the state under such conditions or limitations as in the judgment of the law making power will limit or minimize the evils arising therefrom."

Where men mingle lawful business with that which it is forbidden to carry on during prescribed times, both must close, for if, under the guise of carrying on a lawful business in a room or place where it is forbidden to do that which is declared to be unlawful one may be permitted to keep such place open, endless mischief would ensue.

It is, therefore, my opinion that every room or place where intoxicating liquors are dispensed must be closed during the hours prescribed by law, irrespective of the fact that such rooms or places are also used for restaurant or other purposes.

Yours very truly,

D. M. KELLY,

Attorney General.