

Saloon License, Number of Inhabitants Necessary for. Inhabitants, Number of Necessary for Saloon License. Chapter 87, Laws of 1915, Interpretation of. Towns and Villages, Number of Saloons in.

Under the provisions of Chapter 87, Laws of 1915, it is necessary for a city or town to have one thousand inhabitants before two licenses may be issued. Sections 4 and 5 of this Act, must be construed with the remainder thereof; therefore, Section 4 is effective up until the time when the prohibition named in Section 2 becomes effective.

October 9, 1915.

Hon. Jesse G. Henderson,
County Attorney,
Shelby, Montana.

Dear Sir:

I am in receipt of your communication under date the 6th instant, asking for my construction of Chapter 87, of the Session Laws of the Fourteenth Legislative Assembly. The first question put by you is:

"Is it necessary for a town or city to have one thousand inhabitants before two licenses may be issued, or will the habitation of over five hundred answer the requirement?"

Section 1 of Chapter 87 makes it unlawful for any county or city in this state to issue more than one license for every five hundred inhabitants. There is no proviso or exception named in the statute. The title of Chapter 87 is an Act to amend Chapter 85, of the Laws of the Thirteenth Legislative Assembly. Chapter 85 of the Laws of 1913, contained in Section 1 a proviso that any city or town may issue licenses to two saloons. It will thus be seen that the legislature materially amended the provisions of the former law by leaving off the proviso. The usual rule is that the omission of language in an amendatory Act, acts

as a repeal of such language "where the statute or section is amended to read as follows:"

Sedgwick's Interpretation of Statutes.

A case in point is that of *State v. Beeman*, 15 Wash. 24, 45 Pac. 652. In such case the prior acts gave to county commissioners a per diem mileage. An Act of 1890 provided that they should receive five dollars a day for each day employed in the discharge of their duties. It was held by the Supreme Court of that state that the provision for mileage was repealed. I am of the opinion, therefore, that it is necessary for a city or town to have one thousand inhabitants before two licenses may be issued, the ratio being fixed at one saloon for every five hundred inhabitants. Your second question reads:

"Under Sections 4 and 5 of the Act, can a place having less than fifty inhabitants have a licensed saloon by following the procedure outlined in these sections?"

You state that you are unable to reconcile the provisions of Section 2 and those of Sections 4 and 5. I see no necessary conflict between these sections. Section 2 fixes a time after which licenses shall not be issued in certain places, and under certain conditions. Section 3 exempts from the operation of the Act, persons already in business, or their assignees, excepting persons coming under Section 2. Section 4 has to do with the issuance of new licenses, and provides for petitions and hearings by the Board of County Commissioners. All the parts of this Act must be read together and construed as one law. The result is that Section 4 may be effective up until the time when the prohibition named in Section 2 becomes effective, after which time persons desiring licenses under Section 4 must come within the conditions of Section 2.

Your third question "In view of the requirements of Section 2, 3, 4 and 5, what discretion can be exercised in the granting of licenses to liquor dealers" may be answered by saying that until December 31, 1915, they have a discretion as to the issuance of any new licenses, or the renewal of old licenses, after a petition has been made, such as they had under the preceding law. After this date their discretion will be controlled by the conditions laid down in Section 2.

Questions 4 and 5 of your communication are rather indefinite, and state no specific facts. I cannot therefore, give you an opinion as to these matters without a statement of the facts involved.

Yours very truly,

J. B. POINDEXTER,

Attorney General.