

Retail Liquor License, Issuance of in Certain Territory. Liquor License, Issuance of. Resident, Construed. Hotel Construed With Reference to Liquor License. Section 2, Chapter 87, Laws 1915, Construed.

Chapter 87, Laws of 1915, became a law March 5th, 1915. Different sections of a law may become actively operative at different times. Section 2 of the Act becomes operative December 31, 1915. Retail liquor dealers' licenses may not be issued after said date in any place having a population of

less than fifty inhabitants residing for six months within a radius of one quarter mile of the location of the saloon. This prohibition does not apply to hotels then regularly operated as such, where such hotels have twenty or more sleeping rooms.

December 1, 1915.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter requesting an opinion as to the operation of, and the construction to be placed upon, Section 2 of Chapter 87, Session Laws of 1915.

The Section referred to reads as follows:

"From and after December 31, 1915, it shall be unlawful for any County in this State to issue a license to any retail liquor dealer, that is, a person who sells spirituous, malt, or fermented liquor or wine in less quantity than one quart, in any place having a population of less than fifty (50) inhabitants who are bona fide residents for at least six months within a radius of one-quarter ($\frac{1}{4}$) mile of the location of the license; provided that the county treasurer shall refund the unexpired portion of such licenses bearing an expiration date later than December 31, 1915; and further provided, that this section shall not apply to hotels, regularly operated as such, where such hotels have twenty (20) or more sleeping rooms."

Section 8 provides that the Act shall be in full force and effect from and after its passage and approval. It was approved on the 5th day of March, 1915, and on that day became a law in full force and effect. Every bill passed by the legislative assembly becomes a law when it is approved by the Governor (Const. Art. VII, Sec. 12). It does not follow, however, that all the provisions of a law shall act upon certain specified classes and communities at one and the same time. It may happen that the legislative desire is to have different sections of a statute become actively operative at different times, to the end that business may be conducted under an old statute until it is deemed wise the new law will operate justly and beneficially and equitably. These are matters of policy and propriety within the power of the legislature to prescribe. In so far as the provisions of Section 2 of the Act under consideration are concerned, the legislature could have made these matters the subject of an independent enactment and expressly made provision for the law to become operative December 31, 1915. Acts are frequently passed which, while becoming a law when approved, do not become operative as a whole until some future date, as for instance Chapter 122, Laws of 1915, relating to registration of electors, which became operative sixty days after its passage and approval. For a general discussion upon the subject under inquiry, see

State v. Newbold, 42 Pac. 345, 36 Cyc. 1201.

Section 2 by its express terms becomes operative December 31, 1915, and when it becomes operative its provisions are not to apply to "hotels regularly operated as such where such hotels have twenty or more sleeping rooms." If the hotel be then regularly operated as such, that is to say, if the operation thereof is consistent, methodical, and normal, and the hotel then has twenty or more sleeping rooms, it is exempt from the prohibition of Section 2, irrespective of any consideration as to when such operation actually started, whether before or after the law was passed. On the other hand, if the twenty rooms requirement is resorted to as a makeshift, or subterfuge, or as a mere pretense to comply with the law, the prohibition as to such a hotel would certainly apply. It will not be lawful, for instance, to increase the number of rooms by subdividing, or partitioning sleeping rooms, already constructed, so as to make them too small to be reasonably suitable for sleeping quarters, or to add rooms where there is no bona fide demand for their use as such. To comply with the terms of the statute, all of the rooms should be sufficiently commodious in size and appointments to reasonably serve the purpose of sleeping rooms, and the "hotel" should be a single structure, or if it constitute more than one building, the several units thereof should be so connected, that taken together it may be said they constitute one hotel. In my opinion the question as to whether the prohibition of Section 2 shall apply to any given hotel, presents a question of fact to be determined on the merits.

Inasmuch as I have indicated that Section 2 becomes actively operative on December 31, the population of any given place is to be determined as of that date, and if, in any given place, there be fifty inhabitants who have bona fide resided thereat for at least six months prior to December 31, 1915, and within a radius of one-quarter of a mile of the location of the saloon, the prohibition of the statute does not apply. The word "resident" comprehends all the members of a family exclusive of children less than six months of age.

Yours very truly,

J. B. POINDEXTER,

Attorney General.