

Liquor License, in Unincorporated Towns. Board of County Commissioners, Power of. Issuance, of Liquor License. Revocation, of Liquor License. Jurisdiction, of Board of County Commissioners.

Under the facts herein stated A having surrendered his liquor license, and thereafter again applied for a license, which was granted by the Board of County Commissioners, the action of the Board was void for want of jurisdiction. The persons to whom A transferred said licenses have no greater or better right therein than A, therefore, actions should be instituted to revoke said licenses and to prevent the conduct of an unlawful business.

March 20, 1915.

Hon. George W. Ruffcorn,
County Attorney,
Glasgow, Montana.

Dear Sir:

I am in receipt of your recent request for an opinion upon a state of facts which, briefly summarized, may be stated as follows:

A made application to the county commissioners for the issuance of a retail liquor dealer's license to do business at the town of X, an unincorporated town, under the provisions of Chapter 35, Session Laws of the 13th Legislative Assembly. His petition was favorably acted upon and a license was issued as prayed for. The necessary fee therefor was deposited with the county treasurer, and the license duly issued. Shortly thereafter A appeared before the Board in special session and stated that owing to the general dissatisfaction expressed by the residents of the town of X, for which said license was granted, he desired to surrender the same for the purpose of cancellation. Thereupon an order was entered upon the minutes stating the facts and the license was cancelled, and the order granting the same revoked.

A, however, did not ask to have the fee returned, when he surrendered the license. Thereafter A appeared before the Board and prayed that another license to do business at said town of X be granted to him. No new petition was presented, but proceedings were had upon the petition used for the first

license. The Commissioners proceeded to act upon the matter and entered an order granting the prayer of A. Whereupon the fee required therefor was deposited with the county treasurer, and a second license was issued to A. Thereafter A negotiated the first license to B, and the second license to C, who proceeded to open saloons in the town of X and engage in the retail liquor business, claiming as their authority to do so the licenses referred to.

What are the respective rights of B and C? is the question presented.

The Board of County Commissioners has power to grant licenses for two saloons in any unincorporated town or village, under the provisions of Section I of Chapter 35, and there being no express inhibition against granting two licenses to the same person, I am of the opinion the Board of County Commissioners has jurisdiction to do so. To all intents and purposes, the first license was duly and regularly issued, and were it not for the voluntary act of A in requesting the cancellation thereof, and the act of the Board in complying with the request of A, there could be now no question as to the legality of the first license, but in view of the fact that A voluntarily appeared and requested the cancellation of the license, and an order was entered cancelling the same and revoking the original order, I am of the opinion that such license was revoked in fact, though the license itself was not surrendered. The transferee of the same can claim no greater rights than could A, for he is chargeable with knowing what the public records disclose, and to ascertain what A's rights were, and the mere possession of a license which has been officially cancelled, does not clothe him with color of right to engage in a business for which the law requires as a condition precedent, the possession of a good and valid license. B is, therefore, operating a saloon without a license.

Before the Board of County Commissioners may enter an order granting a retail liquor dealer's license to any person, the provisions of Section 3 of Chapter 35 must be complied with. A petition signed by at least twenty free-holders residing within a radius of ten miles of the town of X, requesting the issuance of a license, must be filed with, and presented to the Board, and before the Board may act on any such petition, five days' notice by posting must be given to the public. Every application for a license must have as its basis a separate petition. The petition upon which the Board acted upon the second application was functus officio. It had served its purpose, and was not an original petition such as to clothe the Board with jurisdiction to act. The Board of County Commissioners is one of limited powers, and may exercise only such as are specifically pointed out by the law, or which are necessarily implied by the provisions of the law. The act of the Board in this instance was void, and though the county treasurer issued the license, and C became the transferee thereof, he being bound to know the law, cannot claim the right to conduct a saloon under such void license, even though the fee required by law for a valid license has been paid.

It is my opinion actions should be instituted to have these licenses revoked by decree of court, and to prevent the conducting of an un-

lawful business in the meantime, proper injunction should be prayed for.

Yours very truly,

D. M. KELLY,

Attorney General.