

Opinion No. 366**Beer—Licenses—Appeal**

HELD: An appeal to the District Court does not stay the order of the State Board of Equalization revoking a license to sell beer until final disposition of the appeal.

October 20, 1933.

We are in receipt of your favor of October 16th in which you inquire whether, when you have cancelled a license to sell beer, an appeal to the District Court stays the order of your board revoking such license until final decision of the court. There seems to be very little authority upon this question. There is considerable authority to the effect that an appeal does not vacate the decision of a court or tribunal where no provision is had for a supersedeas.

In the few cases where similar questions have been decided statutes are involved which differ somewhat from the Montana statute. In relation to intoxicating liquors it has been held: "The act of revocation avoids the license and renders all sales thereunder thereafter illegal even though a writ of certiorari has been sued out. * * * A judgment or order of revocation is valid until reversed or set aside." Woollen & Thornton on the Laws of Intoxicating Liquors, 456.

The cases cited appear to substantiate the text. I would therefore conclude that the decision of the Board revoking the license for the sale of beer is in no way affected by an appeal and such license would not constitute any protection in an action brought for illegal sales while such appeal is pending.