

Opinion No. 477.**Legislative Assembly—Members—
Liquor Control Board—Liquor Vendor
—Appointments—Civil Office.**

HELD: A Liquor Vendor is not, within the meaning of Section 7, Article V of the Constitution, a civil officer. Therefore, the Liquor Control Board may appoint, during his term, a member of the Legislature to the position of Vendor.

February 28, 1934.

You have asked for an opinion on the question whether it is lawful for the Liquor Control Board to appoint a member of the Legislative Assembly, during his term, to the position of liquor vendor.

A vendor, under Chapter 105, Laws of 1933, is appointed by the Montana Liquor Control Board. The statute does not fix his term of employment or prescribe his salary. The statute does not prescribe his duties in detail, but leaves that function to the Board; the vendor is not required by law to file the usual oath of office. He is not required by law to give an official bond, although the Board has required a bond. He is issued no commission to evidence his right to the position. His duties are more largely clerical than executive. He performs functions exercised by the state in its proprietary, rather than in its sovereign or governmental capacity.

Applying to these facts the rules laid down in *State ex rel. Barney v. Hawkins*, 79 Mont. 506, 257 Pac. 411, it is my belief that the position of "vendor" under Chapter 105, Laws of 1933, is not a "civil office" within the meaning of Section 7 of Article V of the Constitution of the State of Montana, which provides that "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; * * * " and, therefore, the Liquor Control Board may appoint, during his term, a member of the Legislature to the position of vendor.