

**Opinion No. 113.****Liquor Control Board—Hours for Sale of Beer—Regulations of.**

HELD: The Montana Liquor Control Board may not regulate the hours for sale of beer.

June 17, 1937.

Mr. Robert H. Allen  
County Attorney  
Virginia City, Montana

Dear Sir:

You have submitted to this office the inquiry as to whether or not the Liquor Control Board of the State of Montana has the power to pass a regulation restricting the hours during which beer can be sold. It appears that the Liquor Control Board has made Rule and Regulation No. 22, restricting the sale of beer, upon premises where the sale of liquor is had, after 2 a. m.

From the information available, we are advised that the Liquor Control Board has not made any regulations

for fixing the hours of the sale of beer, where establishments have only a beer license, but has issued a regulation fixing the hours of sale of beer and liquor.

Section 11, of Chapter 84, of the 1937 Session Laws, relating to the sale of liquor at retail in the State of Montana, provides: "That no liquor shall be sold at retail during the following hours:

Sunday, from two a. m. to one p. m.;

On any other day between two a. m. and eight a. m."

The Act also provides that an incorporated town can further restrict the sale of liquor.

Section 9 of Chapter 84 provides that no person shall have a retail liquor license unless he has a beer license.

Section 2, of Chapter 84, defines "liquor" as meaning:

"All kinds of liquor sold by and/or in a state liquor store."

Chapter 89 of the 1937 Session Laws prohibits the sale of beer by the Montana Liquor Control Board.

Section 22 of Chapter 84 provides:

"For the purpose of administration of this act the board shall make, promulgate and publish such rules and regulations as the said board may deem necessary for carrying out the provisions of this act and for the orderly and efficient administration hereof, and except as may be limited or prohibited by law and the provisions of this act, such rules and regulations so made and promulgated shall have the force of statute."

Subdivision (a) of Section 6, of Chapter 30, 1937 Session Laws, provides that the Liquor Control Board shall administer the Montana Beer Act.

Subdivision (b) of Section 6, of Chapter 30, defines beer as:

"Any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products in drinkable water."

It will be observed that Chapter 84, *supra*, fixes the hours during which liquor can be retailed, and said Chapter 84 defines the meaning of liquor, and the definition of liquor does not include the definition of beer; the definition of beer being contained in Chapter 30 of said act.

Chapter 84 does not attempt to fix the closing hours, or the hours during which beer can be sold.

Section 22 of Chapter 84, authorizing the board to make certain rules and regulations, specifically provides that the board shall make rules and regulations for the administration "of this act," and by "this act" the language specifically refers to Chapter 84, relating to the retailing of liquor.

While it is true that the board has the power to administer the Montana Beer Act, yet the administration of the beer act must be under the authority and provisions of the terms thereof, and to allow the liquor board to fix the hours during which beer may be sold would be to authorize the board to legislate into the beer act something which is not contained therein. In incorporated towns or cities the hours, during which the sale of beer may be had, may be regulated and determined by ordinance, but not by any ruling or regulations of the board.

The legislature, under the provisions of Chapter 84, has specifically prohibited the sale of liquor during certain hours. The statutes are silent as to the hours during which beer may be sold. If the legislature had intended for the Liquor Control Board to prohibit the sale of beer during those particular hours it would have said so in the same specific language that it used in Chapter 84, but having remained silent in one instance and having expressed itself in the other, it is obvious that the legislature did not intend to confer this authority upon the Liquor Control Board.

Therefore, it is my opinion that Regulation No. 22 of the Liquor Control Board, attempting to limit the hours during which beer may be sold, is ineffective and void as far as the sale of beer is concerned.