

Opinion No. 212.

Liquor Licenses—Restricted District.

HELD: Liquor license cannot be granted to operate in restricted district unless applicant operated a bona fide restaurant, cafe, hotel, etc., in said restricted area for one year prior to approval of Liquor Act.

December 14, 1937.

Mr. H. B. Landoe
County Attorney
Bozeman, Montana

Dear Sir:

You have submitted the question as to when a liquor license may be issued to an applicant whose place of business is within 600 feet, on the same street or avenue, of a building occupied exclusively as a church, synagogue or other place of worship or school, except a commercially operated school.

Section 13, of Chapter 84 of the 1937 Session Laws, provides:

"No license shall be granted for any premises which shall be on the same street or avenue and within six hundred feet of a building occupied exclusively as a church, synagogue or other place of worship, or school, except a commercially operated school; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed; **except, however, that no license shall be denied because such restriction may apply to any premises so located which are maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society except similar places of business established and in actual operation for one year prior to the passage and approval of this act.**" (Under-scoring ours.)

The law provides that no liquor license can be issued for any premises on the same street or avenue and within six hundred feet of a building occupied exclusively as a church, etc., or school, etc. An exception to the above restriction is made where the liquor licensee operates upon premises, within said restricted district, which are maintained as a bona fide hotel, restaurant, railway car, club, or fraternal organization or society thereof, and which was established and in actual operation for one year prior to the approval of Chapter 84. The word "except" in the third to the last line of Section 13, supra, must be construed as though the word "or" was inserted therein and the word "except" omitted therein, and the legislature so intended

such an interpretation to be placed upon said language, for the reason that the excepting provision to the restricted zone, as defined by the language in the latter portion of the act, modifies and refers to bona fide hotels which have been in operation for one year prior to the approval of the act.

It was the intention of the legislature to create a restricted district within a specified distance from a church or school upon the same street or avenue; but at the same time it was the intent of the legislature, and it so recognized, that certain vested property rights and characteristics existed, in that the same privileges to acquire the right to dispense liquor and to acquire a license to do so should be extended bona fide hotels, etc., within six hundred feet from said churches or schools, as the same class of businesses had which were located more than six hundred feet from said churches or schools; hence the statutory exception as found in the underscored language in Section 13.

To permit a person to now establish a hotel business, etc., and to now acquire a license for premises located within said restricted district, would be to nullify the law establishing a restricted district, and would leave the door open to subterfuge, because any person desiring to dispense liquor could establish a restaurant, or similar business, upon said premises in conjunction with said liquor business. Therefore, it is my opinion that no liquor license can be granted to an applicant to operate within six hundred feet of a church or school used exclusively for such purposes, and on the same street or avenue, unless said applicant maintained a bona fide hotel, club, or fraternal organization, etc., in actual operation, for one year prior to the approval of Chapter 84, and the word "except" as used in the third to the last line of Section 13 should be construed as though the word "or" was found therein.