

No. 243

INTERDICTION, procedure for—LIQUOR CONTROL BOARD—COURTS, jurisdiction of in interdiction proceedings.

- Held: 1. Any person desiring to have another declared an interdict can file a petition in district court and thereupon the judge issues an order which can be served by a peace officer and the accused person is brought before the judge for examination. If the judge is satisfied, he may make an order of interdiction which will cancel the permit held by such person and prohibit the sale of liquor to him.
2. In such proceeding the county attorney should not act in his official capacity unless asked to do so by the judge.

September 17, 1941.

Mr. Roland V. Colgrove
County Attorney
Musselshell County
Roundup, Montana

Dear Mr. Colgrove:

Recently you wrote this office in part as follows:

"Will you please advise me, first, if an action to have a person declared an interdict should be brought by the County Attorney in his official capacity, or is it a private action? Second, if the action should be brought by the County Attorney, should the person sought to be declared to be an interdict be brought into court, and if so, by what form of process and on how much notice? Third, should the action be instituted in Justice Court as indicated in *State v. Wiles*, 98 Mont. 577?"

Sections 2815.126 to 2815.130, inclusive, Revised Codes of Montana, 1935, and Chapter 166, Laws of 1935 relate to the matter of interdiction. These sections provide as follows:

"Section 2815.126. Interdiction—order of—effect—disposal of liquor of interdicted person. (1) Where it is made to appear to the satisfaction of **any court** that any person, resident or sojourning within the state, by excessive drinking of liquor, misspends, wastes, or lessens

his estate, or injures his health, or endangers or interrupts the peace and happiness of his family, the court may make an order of interdiction directing the cancellation of any permit held by that person, and prohibiting the sale of liquor to him until further order; and the Court shall cause the order to be forthwith filed with the board.

"(2) Every interdicted person keeping or having in his possession or under his control any liquor shall be guilty of an offense against this act, and, on summary conviction thereof, the court making the conviction may in and by the conviction declare the liquor and all packages in which the same is contained to be forfeited to the state of Montana.

"Provided that on the making of an order of interdiction the interdicted person may forthwith deliver to the board all liquor then in his possession or under his control to be kept for him by the board until the order of interdiction is revoked or set aside, or to be purchased by the board at a price to be fixed by it."

"Section 2815.127. Filing of order of interdiction—cancellation of permit. Upon receipt of the order of interdiction, the board shall cancel any permit held by the interdicted person, and shall notify the interdicted person and all vendors, and such other persons as may be provided by the regulations, of the cancellation of the permit, and of the order of interdiction so made and filed prohibiting the sale of liquor to the interdicted person."

"Section 2815.128. Revocation of order of interdiction—restoration of rights. The court by whom an order of interdiction is made under this act, upon being satisfied that the justice of the case so requires, may revoke the order of the interdiction by an order filed with the board; and upon the filing of the order of revocation, the interdicted person shall be restored to all his rights under this act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations."

"Section 2815.129. Application and setting aside order of interdiction—restoration of rights—notice of application. (1) Upon the application to the **judge of any district court** by any person in respect of whom an order of interdiction has been made under this act, and upon it being made to appear to the satisfaction of the judge the circumstances of the case did not warrant the making of the order of interdiction, or upon proof that the interdicted person has refrained from drunkenness for at least twelve months immediately preceding the application, the judge may by order set aside the order of interdiction filed with the board, and the interdicted person shall be restored to all his rights under this act, and the board shall accordingly forthwith notify all vendors and such other persons as may be provided by the regulations.

"(2) The applicant will, at least ten clear days before the application, give notice thereof to the board, in writing, served upon the board, and to such other persons as the judge may direct."

"Section 2815.130. Penalty for violations of act. Every person who violates any provision of this act or the regulations made hereunder, shall be guilty of a misdemeanor unless other punishment is herein prescribed."

From a reading of the foregoing sections two things become at once apparent. One is all proceedings must be instituted in the district court, and not in the justice court, as indicated in the case of *State vs. Wiles*, 98 Mont. 577, 41 Pac. (2nd) 8. The other is the matter of declaring a person an interdict is civil in its nature, and no penalty is imposed until a violation has been made after the order of interdiction has been entered.

If the foregoing sections were the only sections of the Codes of the State of Montana which dealt with people who were so addicted to the use of liquor that they wasted and squandered their estate and injured

their health, it would be difficult to know what procedure to follow in order to have a person declared an interdict. However, all the sections of the code must be so construed together as to give effect to all of them; and it is my opinion this matter is so closely related to the matter of having a person declared an inebriate that the same procedure should be followed.

Sections 1448 and 1449, Revised Codes of Montana, 1935, provide:

"Section 1448. Applications for commitment to hospital. Applications for commitment to said hospital for inebriates shall be made to the judge of the district court of the district which embraces the county in which the person whom it is proposed to commit resides, and said application may be made in person by any dipsomaniac, inebriate, or user to excess of morphine, cocaine, or other narcotic drug, or may be made against any such person by any other person."

"Section 1449. Examination of applicant and commitment—dismissal of patient. On presentation of the application provided for in the preceding section, unless made in person by an inebriate, dipsomaniac, or user to excess of a narcotic drug, the judge shall issue an order, which may be served by any peace officer, directing him to bring the accused person before him for examination, and on the appearance of the accused the judge shall proceed in the manner now provided by law for the examination of insane persons. The accused may be represented by counsel, and the judge may, if he deems it necessary, require the county attorney of the county where the hearing is had to attend and assist in such hearing. In case said application be voluntarily or involuntarily made, and said judge shall determine that the accused is a proper person to be committed to said hospital for inebriates, he shall make the order committing him thereto; otherwise he shall be discharged. The term of detention and treatment shall be until the patient is cured; provided, however, that the superintendent of such hospital may discharge any person committed to said hospital when satisfied that such person is not receiving substantial benefit from further hospital treatment."

It is therefore my opinion any person desiring to have any other person declared an interdict may file a petition with any district court of the State of Montana and thereupon the judge shall issue an order which may be served by any peace officer, directing him to bring the accused person before him for examination. On the appearance of the accused—if it is made to appear to the satisfaction of the court the accused, by excessive drinking of liquor misspends, wastes, or lessens his estate, or injures his health, or endangers or interrupts the peace and happiness of his family—it is the duty of the court to make an order of interdiction directing the cancellation of any permit held by that person and prohibiting the sale of liquor to him until further order.

It is my further opinion that—in such a proceeding—the county attorney should not act in his official capacity, unless called into the proceeding and asked to take part and assist in such hearing by the judge. After a violation has occurred, under Section 2815.130, it then, of course, becomes the duty of the county attorney to prosecute.

Sincerely yours,

JOHN W. BONNER
Attorney General