

No. 401

LIQUOR LICENSES—BEER LICENSES—CLUBS, ASSOCIATIONS AND SOCIETIES—FRATERNAL ORGANIZATIONS

Held: Under Montana Beer Act and Liquor Control Act, local lodge of national fraternal organizations may secure beer and liquor club licenses without having been in existence for one year under Beer Act and two years under Liquor Control Act.

April 17, 1942.

Mr. Ray L. Wahl
Administrator
Montana Liquor Control Board
Helena, Montana
Attention: Mr. T. H. MacDonald,
Assistant Administrator

Dear Mr. Wahl:

You inquire whether the Montana Liquor Control Board may grant a beer license and liquor license to the Elks Lodge of Hamilton, Montana, which has been in existence for less than one year but which is chartered by the Benevolent and Protective Order of Elks, a national fraternal organization, extending to such chartered lodge the privileges, immunities and exemptions of the mother lodge.

Subdivision 2, Section 2, Chapter 84, Laws of 1937, defining the term "club" for the purpose of licensing by the Liquor Control Board, states:

"2. 'Club' means a **national fraternal organization** except college fraternities, or an association of individuals organized for social purposes and not for profit, with a permanent membership and an existence of two years prior to making application for license with permanent quarters or rooms." (Emphasis mine.)

It is obvious from the foregoing the lodge is immediately eligible for the issuance of a "club" license to sell liquor, unless some other conflicting statute exists.

Section 9, Chapter 84, Laws of 1937, requires no liquor license shall be granted an applicant unless he shall have first secured a Montana beer license.

The question thus presents itself whether this Elks Lodge is eligible to secure a beer license. Section 2815.37, Revised Codes of Montana, 1935, lays down the following limitations:

"No club shall be granted a license to sell beer:

(a) If it is a proprietary club or operated for pecuniary gain.

(b) Unless such club was established as such club for at least one (1) year immediately prior to the date of its application for a license to sell beer."

Thus, assuming a local lodge is treated as a distinct and independent "club" under Section 2815.37, *supra*, we find an anomalous situation presented where the statute permits the lodge immediately to secure a liquor license, but because of the requirement a beer license be first secured, which can only be secured one year or more after the "club" is established, the liquor license likewise cannot be procured for a period of one year or more.

It is, of course, elementary that statutes in *pari materia* must be construed together with reference to the whole subject matter (*State ex rel. MacHale v. Ayers*, 111 Mont. 1, 105 Pac. (2nd) 686); and, if it can be gathered from a subsequent statute in *pari materia* what meaning the legislature attached to a condition of a former statute, it will amount to a legislative declaration of its meaning and will govern the construction of the first statute. (*Fergus Motor Co. v. Sorenson*, 73 Mont. 122, 235 Pac. 442.)

To summarize, we have a situation where a club generally must be established for at least one year immediately preceding its application for a beer license (Section 2815.37) and two years for the purpose of securing a liquor license (Subd. 2, Sec. 2, Chapter 84, Laws of 1937). National fraternal organizations, having been excepted from the two-year requirement under Chapter 84, *supra*, it follows that, by application of the rules of statutory construction set forth, the latter statute prevails. Construed with Section 2815.37 it eliminates the necessity, if such necessity exists, that local lodges of national fraternal organizations shall have been established for one year prior to making application for a beer license.

In addition, it may well be doubted whether Section 2815.37 contemplates only local lodges as distinguished from and independent of the mother lodge. It is well known the Benevolent and Protective Order of Elks has been established as a national fraternal organization for many years.

It is my opinion, therefore, a beer license and liquor license may be issued to the Elks Lodge at Hamilton, Montana, immediately—if there has been compliance with all other requirements of your Board.

Sincerely yours,

JOHN W. BONNER
Attorney General