

under the age of 21 when accompanied by their parents?

"2. Is it unlawful in the State of Montana to sell or give away beer to a female person under the age of 21 years?"

In answering your first question, it is necessary to examine several pertinent sections of our code.

Section 2815.48, Revised Codes of Montana, 1935, which was adopted in 1933, provides in part:

" . . . Any person whomsoever, whether a licensee or not, who shall without the corporate limit of any city or town, permit minors to congregate and sell or give away to said minors beer or other liquors shall be deemed guilty of maintaining a nuisance and shall be subject to all the provisions of this section."

Section 11566.1, Revised Codes of Montana, 1935, which was adopted in 1935, provides:

"It shall be unlawful for any person to sell or dispose of beer to a minor unless such minor is accompanied by his or her parent or guardian."

Section 11566.1 having been adopted at a later date than Section 2815.48, amended Section 2815.48 and Section 11566.1 was the law until the enactment of Chapter 124, Laws of 1941. (See Vol. 17, Report and Official Opinions of Attorney General, P. 229.)

Chapter 124, Laws of 1941, amended Section 11048.1, Revised Codes of Montana, 1935, and Section 11048.1, as amended, provides in part:

"Any person who shall sell, give away or dispose of intoxicating liquors to any person under the age of twenty-one (21) years, shall be guilty of a misdemeanor . . ."

Section 11048.2, Revised Codes of Montana, 1935, which was first enacted in 1927, defines "liquor" and "intoxicating liquor" and specifically includes beer as coming within the definition.

The amendment of Section 11048.1 is important as indicating the legislative intent concerning sale of beer to minors. Section 11048.2 supplies the definitions necessary to make Section 11048.1 effective and the proximity of the two sections throws light on the legislative intent.

**Opinion No. 194.**

**Beer—Sales to Persons Under Twenty-One Years, Prohibited—Minors, Sale of Beer to.**

Held: It is unlawful to sell or give away beer to a person under the age of twenty-one years.

March 29, 1944.

Mr. K. W. MacPherson  
County Attorney  
Powell County  
Deer Lodge, Montana

Dear Mr. MacPherson:

You have submitted for my consideration the following questions:

"1. Is it unlawful in Montana to sell or give away beer to persons

In *McLaughlin v. Bardsen*, 50 Mont. 177, 145 Pac. 954, the Court said:

"The arrangement and classification of statutes, their title and headnotes, are all proper and available means from which to determine legislative intent."

Applying the rule of the *McLaughlin* case, the two Sections, 11048.1 and 11048.2, are companion measures and the legislature, in amending one of them, did so with regard to the other.

It is also important to note rule number six of the Montana Liquor Control Board. This rule was adopted August 20, 1942, and provides in part:

"No retail licensee shall give or otherwise supply beer or liquor to any minor under the age of 21 years, . . ."

The Montana Supreme Court considered the rule-making power of the Montana Liquor Control Board in the case of *State ex rel. Stewart vs. Board of Equalization*, 103 Mont. 487, 63 Pac. (2d) 141, and said:

"The act provides that the regulations shall have the force and effect of law (Sec. 2815.12). Hence, the board is authorized to cancel or suspend licenses upon the violation of any valid regulation."

The rule-making power of the Montana Liquor Control Board is not without limitations. (42 Am. Jur. 355.) However, rule number six becomes important in the present instance as an interpretation of the law by an administrative agency. In *Miller Insurance Agency v. Porter*, 93 Mont. 567, 20 Pac. (2d) 643, our Court said:

"It is the settled rule that the practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons."

It is therefore my opinion that, under our statutes, it is unlawful to sell or give away beer to a person under the age of twenty-one years.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General