

Opinion No. 22.**Licenses—Liquor Licenses, Exceptions in issuance to premises within six hundred feet of school or church.**

Held: Unless premises located 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, were so located and maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society, or similar place of business, for one year prior to March 5, 1937, the effective date of Chapter 84, Laws of 1937 the Liquor Control Board may not issue a license for such premises.

March 19, 1943.

Mr. T. H. MacDonald
Acting Administrator
Liquor Control Board
Helena, Montana

Dear Mr. MacDonald:

You have requested my opinion as to whether or not the board is authorized or compelled to issue a retail liquor license to an applicant, otherwise qualified, under the following facts:

“The question arises on the following state of facts:—One McGrath was a partner in the Pastime Pool Hall in Lima. During his temporary absence from the state, his partner in 1940 took the license in his own name. I have seen McGrath’s documents, however, which show that he retained his interest in the business up to the first day of January, 1943. At that time his partner moved across the street into the hotel which he leased and runs including a dining room and bar.

“This hotel is within six hundred feet of a school. McGrath promptly asked for a license for the Pastime Pool Hall across the street from a school and within 200 feet thereof, which has been operated first as a beer parlor prior to 1937, and licensed as a liquor and beer parlor down to January 1, 1943.

“McGrath now asks for a beer and liquor license for the Pastime Pool Hall; the school board protests. On

the language of the act, it occurs to me that the statute is a landlord statute rather than a licensee statute. McGrath owns the pool hall."

An answer to your inquiry requires the interpretation of Section 13, Chapter 84, Laws of 1937, which, insofar as pertinent here, is as follows:

"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 as a commercially operated school . . . 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." (Emphasis mine.)

The fundamental rule of construction of statutes is to ascertain and give effect to the intention of the legislature as expressed in the statute. *State v. Stewart*, 53 Mont. 18, 161 Pac. 309; *State v. Com'rs of Cascade County*, 89 Mont. 37, 296 Pac. 1. Statutes should be construed to carry out the legislative aim. *State v. Mills*, 81 Mont. 86, 261 Pac. 885. The legislative aim or intent is to be determined from apparent purpose of the statute. *State v. Hays*, 86 Mont. 58, 282 Pac. 32; *McNair v. School Dist. No. 1, Cascade County*, 87 Mont. 423, 288 Pac. 188.

It is clear the intent of the legislature in enacting Section 13, supra, was to prohibit the sale of intoxicating liquor and the conducting of places where such liquor was sold within six hundred feet of a school, church, etc. The reason for such restriction is obvious. However, the legislature recognized the fact that at the time Chapter 84 was enacted, in many localities there were established and maintained bona fide hotels, restaurants, railway cars, clubs and fraternal organizations and societies within six hundred feet of a school or church. The legislature evidently did not, for reasons it must have recognized, desire to restrict such places. It therefore wrote into the act an exception in favor of such places which were established for one year prior to the enactment of

Chapter 84. The act specifically mentions the particular kinds of businesses excepted, to-wit, hotels, restaurants, railway cars, clubs or fraternal organizations or societies. Having specifically mentioned the kind of premises excepted, under the well recognized rule of construction, "expressio unis est exclusio alterius," all others must be deemed to have been excluded. It therefore follows that unless the premises in question were established, operated and maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society, for one year prior to the effective date of Chapter 84, Laws of 1937, to-wit, March 5, 1937, it does not come within the exception of the statute and is not entitled to a license.

It is clear from Section 13, of Chapter 84, Laws of 1937, and other provisions of the act that the license is issued for the premises rather than to the owner or proprietor. It is, therefore, immaterial whether the license is issued in the name of an individual or a partnership. The controlling fact in determining whether a license may be issued for the sale of liquor at a particular premise, is whether or not such premise is located within six hundred feet of a church, school, etc., and whether such premise come within the exception contained in Section 13, supra. It follows from the facts here considered that inasmuch as this particular premise located within six hundred feet of a school was operated as a beer hall prior to the effective date of Chapter 84, and not as a bona fide hotel, restaurant, railway car, club or fraternal organization, the board is without authority to issue a license for such premise.

It is therefore my opinion that unless premises located 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, were so located and maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society, or similar place of business, for one year prior to March 5, 1937, the effective date of Chapter 84, Laws of 1937, the Liquor Control Board may not issue a license for such premises.

Sincerely yours,
R. V. BOTTOMLY
Attorney General