

3. The population as determined by the last official United States census is the basis for such limitation, and the limits or boundaries of such a town have no bearing upon the question.

May 24, 1947

Mr. M. L. Parcels  
County Attorney  
Stillwater County  
Columbus, Montana

Dear Mr. Parcels:

You have requested my opinion on the following questions:

1. Does the limit of distance as provided in Chapter 226, Laws of 1947, as to distance under the provision, "In towns of 500 inhabitants or less and within a distance of five miles from the boundaries of said towns", apply to the number of licenses which may be issued within such five mile area, or, does it apply to the citizens or resident qualification of the applicant?

2. Is the 500 inhabitants limited to what the last United States census authorized by Congress shows as residents of the "town", or is it the number residing in the town plus the number of those residing in "and within a distance of five miles from the boundaries of said towns"?

3. How are we to determine the limits or boundaries within which inhabitants of an incorporated town or village are to be counted, or is this fact determined solely by the census above mentioned?

Your first question as finally analyzed requires an opinion as to whether the provisions refer to the number of licenses to be allowed or to the citizen or resident qualifications of those who apply for such a license. It would appear to me that the intent and purpose of the legislature were to limit the numbers of such licenses to be issued within this well defined area. The title of the Act and the first sentence of the amendment refer specifically to the "number of licenses" to be allowed. In doing so it refers to "qualified appli-

#### Opinion No. 37

#### Licenses, Liquor, Number of— Population, Cities and Towns— Boundaries, Cities and Towns.

**Held:** 1. The limit of distance noted by Chapter 226, Laws of 1947, applies to the number of saloons or liquor dispensaries which can be located within a town or city, and its five (5) mile radius, and does not refer to a limitation as to the inhabitants who may carry on such business.

2. The provision designating "500 inhabitants" noted in the Act is limited to the population as listed by the last official United States census authorized by Congress, irrespective of any population which might be in the five (5) mile area surrounding the town or city.

cants", such qualifications being provided within the provisions of the 1937 Act, especially Section 10. Had the legislature seen fit to change the individual qualifications which are contained within that section it would appear most likely that it would have amended Section 10 of the Act and not Section 3, which is a general proviso as to the issuing of licenses. Subdivision 6 of Section 10 specifically provides for the qualifications and is as follows:

"No license shall be issued by the board to: 6. A person who is not a citizen of the United States and who has not been a citizen of the State of Montana for at least five (5) years and who has not been a citizen of the county in which the license is to be issued for at least one (1) year."

In answer to your second question I refer you to that special proviso of the law, which provides as follows:

" \* \* \* \* the number of the inhabitants in said cities and towns not including the number of inhabitants residing in the said five (5) mile area shall govern for the issuing of licenses within the limits of said cities and towns and including the said five (5) mile area from the boundaries of said cities and towns; \* \* \* \*"

Thus the population in the town governs the limitations of the area including both the town itself and the five mile extension. This is, of course, further limited in the case where the five mile area encompasses another city or town wherein it is specifically provided as follows:

" \* \* \* \* provided, however, that where there is a town within the five (5) mile area from a city, the populations shall be added together and the board shall determine the number of liquor licenses to be issued in said city and town, and the five (5) mile area from said city and town, provided also that the number shall not exceed the above limitations; \* \* \* \*"

This, however, encompasses another question not to be discussed by this opinion.

As to your third question, it appears that the boundaries of the town would be of no significance but rather the basis for such limitation of licenses is to be the last official United States census authorized by Congress, namely, that of 1940.

It is, therefore, my opinion:

1. The limit of distance noted by Chapter 226, Laws of 1947, applies to the number of saloons or liquor dispensaries which can be located within a town or city, and its five (5) mile radius, and does not refer to a limitation as to the inhabitants who may carry on such business.

2. The provision designating "500 inhabitants" noted in the Act is limited to the population as listed by the last official United States census authorized by Congress, irrespective of any population which might be in the five (5) mile area surrounding the town or city.

3. The population as determined by the last official United States census is the basis for such limitation, and the limits or boundaries of such a town have no bearing upon the question.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General