

**Opinion No. 25**  
**Elections—Sale of Liquor Prohibited**  
**During Hours Polls Are Open**  
**—Intoxicating Liquors—School**  
**Elections.**

**Held:** Establishments holding retail beer and liquor licenses must be closed during the hours when the polls are open on the day of the annual election of school trustees and on the days of special bond elections.

June 27, 1951.

Mr. R. M. O'Hearn  
State Liquor Administrator  
Helena, Montana

Dear Mr. O'Hearn:

You have requested the opinion of this office on the following question: "Must licensed retail beer and liquor establishments be closed during the hours the polls are open on (1) the day of the annual election of school trustees; (2) the day of the annual election in cities and towns; (3) days of special bond elections."

Section 4-414, R. C. M., 1947, provides that retail liquor establishments shall not sell, offer for sale or give away liquor at retail "on any day of a general or primary election during the hours the polls are open, excepting bond elections." Section 4-303, R. C. M., 1947, provides that licensed beer establishments shall be "closed" during the hours the polls are open "on any day of a general, primary, or special election." A retail liquor licensee must also be the holder of a retail beer license. Section 4-411, R. C. M., 1947. Section 4-303, R. C. M., 1947, is later legislation than Section 4-414, R. C. M., 1947, having been enacted as Section 1, Chapter 16, Laws of 1943, while Section 4-414 was enacted as Section 12, Chapter 84, Laws of 1937. A retail beer establishment, when "closed" must be closed for all purposes, including the dispensing of liquor. See note 22 in

11 Corpus Juris at page 917, relating to definitions of "closed saloon". Obviously, an establishment licensed for the sale of beer or for the sale of beer and liquor at retail must be "closed" on a day of a special bond election during the hours the polls are open in view of the wording of Section 4-303, R. C. M., 1947.

"A "general election" is one that recurs in each election precinct of the state on a day designated by law for the selection of officers. Arps. v. State Highway Commission, 90 Mont. 152, 162, 300 Pac. 549. A "general election" is also defined as one provided by law for the election of officers throughout the state or certain subdivisions thereof. 29 C. J. S. Elections, par. 1 (b). Elections of school trustees occurs annually in each school district in the state under the requirement of Section 75-1603, R. C. M., 1947. Such elections are, therefore, "general elections" within the usually accepted meaning of the term. In the case of Ford v. Moss, 124 Ky. 288, 98 S. W. 1015 it was held that school elections were general elections within the meaning of a statute prohibiting the sale of intoxicating liquor on "general election" days.

The elections held by cities and towns annually are not elections held in each and every voting precinct of the state and are not therefore "general elections". Therefore, Sections 4-303 and 4-414, R. C. M., 1947, do not require that establishments licensed to sell beer and liquor be closed during the hours the polls are open for such municipal elections. However, cities and towns may be ordinance require that such establishments be closed during municipal elections.

It is my opinion that establishments licensed for the sale of beer or liquor at retail must be closed during the hours the polls are open on (1) the day of the annual election of school trustees; (2) the day of any special bond election held in the voting district where the licensed establishment is located. Of course, there is no question but that such establishments shall be closed during the hours the polls are open on days of elections regularly recurring the first Tuesday after the first Monday of November in each even numbered year and the regular so-called "Primary election" held every

other year on the third Tuesday of July.

Very truly yours,  
ARNOLD H. OLSEN  
Attorney General