

sale be required to obtain a wholesale store license from the State Board of Equalization if such dealer sells goods, wares, or merchandise other than beer in wholesale quantities?

You have also informed me that about one-third of the licensed wholesale beer distributors have obtained wholesale store licenses covering the sale of products other than beer from your department, but that a number of other distributors, who deal in products other than beer, have not done so.

Section 84-2410, R.C.M., 1947, defines the word "store" for the purpose of the store license tax:

"The term 'store' as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, co-partnership, or group, either domestic or foreign, **in which goods, wares or merchandise of any kind are sold, either at retail or wholesale:** and subject to the classification contained in sections 84-2405, 84-2406 and 84-2407." (Emphasis Supplied)

That section positively includes all stores, and makes no exclusion of merchants who also hold licenses to handle beer under the Montana Beer Act. The word "wholesale" used in this section is a word of very wide scope and has been held to include any "sale of goods in gross to retailers who sell to consumers". (State vs. Spence, 127 La. 336, 53 So. 596).

Section 4-302 (i), R.C.M., 1947, defines "wholesaler" as that term is used in the Montana Beer Act:

"(i) 'Wholesaler' means any person having a store or establishment for the sale and distribution of beer in wholesaling or jobbing quantities, or for the sale and distribution of beer in original packages to the public with intent that such packages shall be delivered or taken away from the premises of such wholesaler in unbroken package for consumption off the premises of such wholesaler."

Opinion No. 68

Taxation — Store License Tax — Montana Beer Act — Beer Wholesalers

HELD: Dealers who are licensed to sell beer at wholesale under the Montana Beer Act and also sell other products at wholesale, must have a wholesale store license as prescribed in Section 84-2407, R.C.M., 1947.

March 28, 1956

Mr. J. F. Reid, Chairman
State Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Reed:

You have requested my opinion upon the following question:

Should a dealer who is properly licensed by the Montana Liquor Control Board to engage in the business of selling beer at whole-

This section and its accompanying sections (4-301 through 4-356) do not attempt to exclude licensees dealing in goods other than beer from the provisions of the wholesale store license act.

There is no conflict between these quoted sections. They are mutually exclusive and each is directed to a different purpose. The Montana Beer Act completely controls the sale of beer, and the wholesale store license act applies to the sale of all other goods. All sellers of goods other than beer at wholesale are included in the wholesale store license tax, and no exclusion is made for those dealers who sell goods other than beer while also licensed to sell beer under the Montana Beer Act.

It is therefore my opinion that dealers who are licensed to sell beer at wholesale under the Montana Beer Act and also sell other products at wholesale must have a wholesale store license as prescribed in Section 84-2407, R.C.M., 1947.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.