

Opinion No. 18**STATE LIQUOR CONTROL BOARD; Classification of state liquor stores
—WORDS AND PHRASES; "Volume of Business"—SECTIONS
4-114, 4-123, 4-240, 4-417, 19-102, RCM, 1947.**

Held: "Volume of Business," the basis upon which state liquor stores are classified under Section 4-114, RCM, 1947, means the total revenues charged and collected by such store in the performance of any of its statutory duties.

June 30, 1961

Mr. J. E. Manning, Administrator
State Liquor Control Board
Front & Lyndale
Helena, Montana

Dear Mr. Manning:

Section 4-114, RCM, 1947, pertaining to the establishment of state liquor stores provides that the board shall classify state liquor stores according to the volume of business which each store does each fiscal year. Allocation of employees and determination of their salaries is based on the classification of the stores. There is thus a correlation between the responsibility and duties demanded of each employee and the volume of business transacted by the store at which he is employed.

The price paid by the liquor store patron includes a state excise tax. You ask whether the volume of business done by the store shall include this tax and the license taxes and permit fees collected by the several stores.

What then is meant by volume of business? Section 19-102, RCM, 1947, provides:

"Words and phrases used in the codes or other statutes of Montana are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, as amended, are to be construed according to such peculiar and appropriate meaning or definition."

A nontechnical term used in statute must be understood in its ordinary sense. (*State v. Board of Commissioners of Big Horn County*, 273 Pac. 290, 83 Mont. 540). Where words in statute have not acquired peculiar meaning in law, they must be taken in their ordinary sense with the meaning commonly given them. (*Lewis v. Petroleum County* 17 Pac. 2d 68, 92 Mont. 563, 86 A.L.R. 575.)

The definition of "business" furnished by Webster was accepted by our Supreme Court in *Territory v. Harris* (1888—8 Mont. 140). Webster defines "business" as:

"That which busies, or that which occupies the time, attention, or labor of one, as his principal concern, whether for a longer or shorter time; employment; occupation; any particular occupation or employment for a livelihood or gain, as agriculture, trade, mechanic art, or profession; mercantile transactions or traffic in general; concern; right or occasion of making one's self busy; affair; transaction, used in an indefinite sense, and modified by the connected words."

With this general definition in mind it is evident that the term "business" as it is used in Section 4-114, (*supra*) refers to all the functions and activities the store is charged by law with performing.

The term "volume" as it is used in Section 4-114 (*supra*) refers to the total amount of money taken in by the store in the course of business.

A state liquor store is required to charge and collect an excise tax at the time of sale of any liquor. (Sec. 4-417, R.C.M., 1947.) It must also charge and collect a license tax (Sec. 4-240, R.C.M., 1947) and permit fees. (Sec. 4-123, R.C.M., 1947.)

The business of the store involves the performance of these functions. The volume of business then is the amount of money taken in the performance of these functions.

Therefore, it is my opinion that for the purpose of classification of state liquor stores under Section 4-114, RCM, 1947, the volume of business done by a state liquor store is measured by the amount of money charged and collected by the store in the discharge of its statutory duties.

Very truly yours,
FORREST H. ANDERSON
Attorney General