

After a very great deal of hesitation, I have come to the conclusion that perhaps the proposed building may be legitimately described as a temperance hotel. Hotels of course are not prohibited. I prefer, however, not to rest my decision wholly, or mainly, upon this view of the question.

Take it, however, that it is not an hotel, is the applicant entitled to be permitted to erect the proposed building upon the proposed site? I am of opinion that he is. The refusal, as I have stated, was based upon by-law No. 6061, but the question cannot be determined by this by-law alone. It prohibits the erection of an "apartment or tenement house" upon the site in question. When it was passed building by-law No. 4861 was in force and this latter defined and constituted an apartment house where separate cooking is not done, as I have already quoted, "a lodging house." The proposed building as now shewn by the plans and specifications and described in the affidavits is a lodging house within the meaning of this definition. That it is called an hotel is immaterial as an hotel, by the same definition is also a lodging house. It is manifest then that by-law 6061 prohibited apartment and tenement houses as defined under this caption in the building by-law, only, and not those designated lodging houses in the same building by-law.

It was argued that you must adopt the unlimited description of the statute of 1912, but this contention is based on a misconception of the function of the statute. The statute is not intended to prohibit anything. It gives the power to prohibit and limits its extent. Within that limit the council can act, short of that limit they may stop—as they did here. Beyond that limit they cannot go. To adopt the full measure of the statutory definition, or rather limitation, the council had only to repeal the definitions quoted; and failing to do this these definitions govern.

Is the situation altered by the new by-law? I cannot see that it is, and I have already indicated the reason, namely, that it re-enacts the former definition of a lodging house. A lodging house as defined under the former by-law was not prohibited by No. 6061. A lodging house under the new by-law is just what it was under the old and is nowhere prohibited.

The wisdom or unwisdom, or the fairness or unfairness of the powers conferred by the Legislature, or, the exercise