

sum shall be expended under the provisions of this act in excess of \$50,000."

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved April 21, 1923.

CHAPTER 415—H. F. No. 1043.

An act authorizing and empowering cities now or hereafter having a population of over fifty thousand inhabitants to sell, lease, divert, alienate, or otherwise dispose of park property abutting on a navigable river owned by such city, by unanimous vote of the council or governing body of such city.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Cities may dispose of park property.**—That any city in this state now or hereafter having a population of over fifty thousand inhabitants, is hereby authorized and empowered within three months after the passage of this act to sell, lease, divert, alienate, or otherwise dispose of any park property abutting on a navigable river owned by such city, upon the passage of an ordinance by a unanimous vote of the city council or governing body of such city.

Sec. 2. **Not to affect other powers of council.**—Nothing herein contained shall be construed as a limitation or restriction upon the powers and authority now vested in said cities in respect to such lands.

Sec. 3. **Application.**—This act shall apply to cities now or hereafter having a population of over fifty thousand inhabitants and operating under a charter adopted pursuant to Section 36, Article 4, of the State Constitution.

Approved April 21, 1923.

CHAPTER 416—H. F. No. 1049.

An act to amend Chapter 455, General Laws of Minnesota for 1919, being an act entitled, "An act to prohibit the manufacture, sale, disposition or transportation of, or the keeping or having in possession for sale, disposition or transportation, or the soliciting, receiving or taking any order for intoxicating liquor, except for certain purposes, and to regulate the manufacture, sale, disposition, transportation, possession and use of intoxicating liquor for such purposes and to provide for the enforcement of such prohibition and to provide for the suspension of laws inconsistent herewith in certain cases; to define nuisances and provide for the abatement thereof and the injunction of the person creating,

keeping or maintaining or aiding in the same and providing penalties for violations of this act", and to amend Section 1 thereof as amended by Chapter 65, Extra Session Laws of Minnesota for 1919, and by Chapter 391, General Laws of Minnesota for 1921, and to amend Section 2, Section 11, Section 16, Section 20, Section 21, Section 23, Section 25, all of said Chapter 455 as amended by said Chapter 391 of the General Laws of Minnesota for 1921; and further provide for prohibition in relation to intoxicating liquor and for the enforcement thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Definition of intoxicating liquors.**—That Section 1 of Chapter 455, General Laws of Minnesota for 1919, as amended by Chapter 65, Extra Session Laws of Minnesota for 1919, and by Section 1, Chapter 391, General Laws of Minnesota for 1921, be and the same is hereby amended so as to read as follows:

"Section 1. Wherever used in this act the terms 'intoxicating liquor' and 'liquor' shall include and mean ethyl alcohol and any distilled, fermented, spirituous, vinous or malt liquor or liquid of any kind potable as a beverage whenever any of said liquors or liquids contain one-half of one per cent or more of alcohol by volume; *and shall also include and mean any liquor or liquid of any kind potable as a beverage which is in fact intoxicating.* In any action or proceeding under this act, civil or criminal, the fact that any such liquor or liquid which is potable as a beverage will, when drunk, produce an intoxicating effect, shall when established, be proof that such liquor or liquid contains one-half of one per cent or more of alcohol by volume and is intoxicating within the meaning of this act; the terms 'sell' and 'sale' shall include all barter, gifts and all means of furnishing liquor in violation or evasion of law; and the word 'physician' shall include and mean any physician, surgeon, dentist or veterinarian, duly licensed to practice and practicing as such within this state, and no other person; the word 'pharmacist' shall include and mean only any duly licensed and registered pharmacist or druggist actually carrying on business as such in good faith within this state; the word 'person' shall include and mean natural persons and corporations whether acting by themselves or by servant, agent or employee; words of singular number shall include their plurals, and words of masculine gender shall include the feminine or neuter as the case may be.

"Wherever an address or location is required to be given in this act, it shall be held and construed to require the giving of the state, county, town, village or city, street and street number of the residence, place or place of business as the case may be.

"*Nuisance*" shall include the premises and every place where liquor in any quantity is manufactured or sold or kept or had for sale, or where any order therefor is taken, received or solicited con-

trary to the constitution or law of the state or of the United States, or where there is any still, apparatus, implement, machine, device, contrivance, utensil or thing or any tablet, compound, substance or matter or material of any kind or nature whether liquid or solid, or any formula, receipt or direction, any of which is apparently designed or intended for use or used therein for or in or in connection with the manufacture or sale of intoxicating liquor or any violation of the constitution or law of this state or of the United States relating to intoxicating liquor, or where any of the things herein specified are kept, had or possessed or any act whatever done, in violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, and all liquor in every such place and every bar, bar fixture, vessel, jug, container or receptacle of any kind, and every still or other thing of any kind herein before mentioned, any of which is apparently designed or intended for use or used therein for or in or in connection with the manufacture or sale of intoxicating liquor, or any violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor. Any person who in any way assists in creating, keeping or maintaining a nuisance, or who sells any liquor, liquid or any tablet, compound, substance or matter or material of any kind or any formula, recipe or direction, or any still, apparatus, implement, machine, device, contrivance, utensil, or thing of any kind with knowledge or reason to believe that the same is to be used or intended for use for or in or in connection with a nuisance or the creation, keeping or maintenance thereof, or who knowingly permits any premises or place owned, managed or controlled by him to become or remain a nuisance, shall be held to be aiding in such nuisance.

"The term 'wholesale druggist' as used in this act is hereby declared to mean one who in good faith deals in drugs, chemicals, and medicines in large quantities and who sells such drugs, chemicals and medicines chiefly to retailers thereof who in turn retail the same in small quantities to the consumers."

Sec. 2. Manufacture, sale and transportation prohibited except under certain conditions.—That Section 2 of Chapter 455, Laws of 1919, as amended by Section 2, Chapter 391, Laws of 1921, be and the same is hereby amended so as to read as follows:

"Section 2. The manufacture, sale or transportation, or keeping or having in possession for sale or transportation of, or the taking, receiving or soliciting of any order for intoxicating liquor of any kind in any quantity whatever is prohibited within this state, and it shall be unlawful for any person not having a permit to manufacture liquor as provided by this act, to have or possess any still, except a still legally registered or the possession of which is expressly permitted under and by the terms and provisions of the law of this state or of the United States, or a rule or regulation made

pursuant thereto, and authorized thereby or any apparatus, implement, machine device, contrivance or utensil, or any tablet or compound of any kind or nature whether liquid or solid, or any formula, recipe or direction, any of which is designed for use or used for or in or in connection with the manufacture of intoxicating liquor; and it shall be unlawful to manufacture, sell, have or possess any of the things herein specified or any substance or material of any kind, any of which is designed or intended for use or used in committing a violation of any provision or part of the constitution or law of this state or of the United States, relating to intoxicating liquor; and no property right shall exist therein or in any thereof; provided that nothing in this act shall prevent the manufacture, sale, transportation of methyl or denatured alcohol and provided, further that nothing in this act shall prevent the manufacture, sale, transportation of ethyl alcohol for chemical, mechanical, medicinal, pharmaceutical, scientific or industrial purposes, or of liquor for medicinal purposes, or of wine for sacramental purposes, or the use of so much alcohol as is necessary for legitimate purposes of extraction, solution or preservation in the manufacture of anything other than a beverage, or the sale or transportation of liquor by pharmacists or wholesale druggists, all upon the conditions and under the restrictions herein prescribed and not otherwise; and provided further that nothing in this act shall prevent the manufacture of United States Pharmacopeia or National Formulary preparations, upon the conditions and under the restrictions herein prescribed, and not otherwise; provided, further that the provisions of this section shall not be deemed to prohibit the importation and introduction into the state by any regularly appointed and ordained priest, minister or pastor of any church or established religious organization, of wine for sacramental purposes purchased without the state."

Sec. 3. Proceedings in court.—That Section 11 of Chapter 455, Laws of 1919, as amended by Section 8 of Chapter 391 of the Laws of 1921, be and the same is hereby amended so as to read as follows:

"Section 11. The court, or judge in vacation, upon the presentation of a verified complaint, specifically describing the premises, may issue an ex parte order restraining, until further order of the court, the defendant and all other persons from removing, disposing of, destroying, or in any way interfering with any liquor, or any bar, bar fixture, vessel, jug, container, or receptacle of any kind, or any still, apparatus, implement, machine, device, contrivance, utensil or thing, or any tablet, compound or substance or matter or material of any kind or nature, any of which *constitutes*, or is apparently designed or intended for use or used for or in connection with a nuisance or the manufacture or sale of liquor or any violation of any provision or part of the constitu-

tion or law of this state or of the United States relating to intoxicating liquor, therein, and requiring the officer serving the same to search the premises or place and make and file an inventory of everything herein mentioned found therein *constituting a nuisance or apparently used or designed or intended for use in connection therewith; provided that the failure to make, file or serve any such inventory shall not invalidate or in any way affect the legality of any search or seizure or proceeding or prosecution made or had under the provisions of this act.* The court or judge may, also, in such proceeding allow a temporary writ of injunction without bond if the existence of a nuisance appears to the satisfaction of the court, or judge, by evidence in the form of affidavits or depositions or oral testimony or otherwise, as the complainant may elect, or the judge by previous order shall have directed.

"If the hearing is continued at defendant's instance the temporary writ shall be granted as of course."

Sec. 4. **Abatement of nuisances.**—That Section 16 of Chapter 455 of the Laws of 1919, as amended by Section 10 of Chapter 391 of the Laws of 1921, be and the same is hereby amended so as to read as follows:

"Section 16. The court need not find that the premises are a nuisance at the time of the trial but on finding that the material allegations of the complaint are true the court shall make its injunctive order.

"If the existence of a nuisance be admitted or proved, an order shall be made abating and permanently enjoining the same. Such order shall direct the removal from the premises or place of all liquor, and of every bar, bar fixture, vessel, jug, container or receptacle of any kind, and every still, apparatus, implement, machine, device contrivance, utensil and thing, and every tablet compound or substance and all matter and material of any kind, and every formula, recipe or direction, *unlawfully kept, had or possessed therein or designed or intended for use or used for or in or in connection with such nuisance or the manufacture or sale of intoxicating liquor or any violation of any provision or part of the constitution or law of this state or of the United States, relating to intoxicating liquor, therein, and the destruction of all such liquor, and every such tablet, compound and substance and all such matter and material of any kind and every such formula, recipe or direction, and of every such still, apparatus, implement, machine, device, contrivance and utensil.*

All such other things shall be sold by the sheriff as upon execution.

"The order shall perpetually both as to the present and the future forbid the creation, keeping or maintaining anywhere within the state of the same or of any nuisance within the provisions hereof, or the aiding therein, by any of the defendants; and if the

owner had notice, or knowledge, or reason to believe the existence, of such nuisance prior to the commencement of the action and failed to abate the same, the order shall, and in any event, may, in the discretion of the court, direct the effectual closing of the premises or place against its use for any purpose for a period of one year unless sooner released as herein provided."

Sec. 5. **Search warrants to be issued.**—That Section 20 of Chapter 455, Laws of 1919, as amended by Section 11, Chapter 391, Laws of 1921, be and the same is hereby amended so as to read as follows:

Section 20. Upon complaint before any court having jurisdiction charging any person with manufacturing, selling or keeping or having in possession for sale, or taking, receiving or soliciting any order for or having in his possession in any place or on any premises any intoxicating liquor, or any still, apparatus, implement, machine, device, contrivance, utensil or any tablet, or compound of any kind or nature, whether liquid or solid, or any formula, recipe or direction, or any matter, material or thing of any kind, in violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, or designed or intended for use or used in committing a violation thereof, or with the keeping of a nuisance, and particularly describing the premises or place, the court in addition to issuing a warrant for the arrest of such person shall also issue a search warrant commanding an officer to search such premises or place and seize and hold subject to the order of the court all liquor, and every bar, bar fixture, vessel, jug, container or receptacle of any kind, and every still, apparatus, implement, machine, device, contrivance, utensil or thing, and every tablet, compound or substance and all matter and material of any kind, whether liquid or solid, and every formula, recipe or direction found therein, any of which is apparently kept, had or possessed or manufactured or sold in violation of any provision or part of the constitution or law of this State or of the United States relating to intoxicating liquor or any of which is apparently designed or intended for use or used for or in or in connection with any violation thereof, and make an inventory of the same and serve a copy thereof forthwith on the defendant or person in charge of the premises; provided, however, that the failure to make file or serve any such inventory shall not invalidate or in any way affect the legality of any search or seizure or proceeding or prosecution made or had under the provisions of this act.

"The destruction, removal or concealment, or attempted destruction, removal or concealment of any vessel, jug, container or receptacle of any kind apparently containing intoxicating liquor in any such place or premises while a search thereof is being made under the provisions of this act, shall be prima facie evidence that such vessel, jug, container or receptacle contained and contains intoxi-

cating liquor and the removal, concealment, destruction, pouring out, or changing the character of any liquid in any such place or premises or the attempt to do so while a search thereof is being made under the provisions of this act, shall be prima facie evidence that such liquid was and is intoxicating. The destruction, mutilation, removal or concealment of any still, apparatus, implement, machine, device, contrivance, utensil or thing or any tablet, compound or substance or material or matter of any kind, or any formula, recipe or direction apparently designed or intended for use or used for or in or in connection with any violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, in or upon any such place or premises while a search thereof is being made under the provisions of this act, shall be prima facie evidence that the same was kept, had and possessed therein in violation of the provisions of this act and designed and intended for use and used in and in connection with such violation."

Sec. 6. **Destruction of liquor.**—That Section 21 of Chapter 455, Laws of 1919, as amended by Section 12, Chapter 391, Laws of 1921, be and the same is hereby amended so as to read as follows:

"Section 21. If the defendant in any criminal action be convicted, the liquor and every tablet, compound or substance and all matter and material of any kind, and every formula, recipe, or direction, and every still, apparatus, implement, machine, device, contrivance or utensil found on the premises, any of which constitutes, or is designed or intended for use or used for or in or in connection with the nuisance or with the commission of the offense charged and for which the defendant was convicted, shall be destroyed by the officer seizing the same, and all other articles seized constituting or designed or intended for use or used for or in or in connection with the nuisance or with the commission of the offense charged and for which the defendant was convicted, shall be forfeited to the school fund of the county and sold by the officer as upon execution.

Sec. 7. **Prosecution by county attorney.**—That Section 23, Chapter 455, Laws of 1919, as amended by Section 13, Chapter 391, Laws of 1921, be and the same is hereby amended so as to read as follows:

"Section 23. Every County Attorney shall prosecute all cases under this Act arising in his county; and it shall be his duty, upon the receipt of information of any violation of this act if he has reasonable ground to believe that any such violation has occurred, to make proper complaint thereof in any court having jurisdiction duly charging the offense committed against the person or persons committing the same. The President or Mayor of every municipality shall make complaint of any known violation of the provisions of

this Act and the Chief of Police and all policemen shall make arrests and complaints as provided in this section, anything in the ordinance or by-laws of any such municipality to the contrary notwithstanding. *Whenever any sheriff, deputy sheriff, constable, marshal, policeman or other peace officer shall discover any person in the act of manufacturing, selling or keeping or having in possession for sale, or taking, receiving or soliciting of any order for intoxicating liquor or in the act of manufacturing or selling, any still, apparatus, implement, machine, device, contrivance or utensil or any tablet or compound of any kind or nature, whether liquid or solid, or any formula, recipe or direction in violation of any provision or part of the constitution or law of this state or of the United States relating to intoxicating liquor, or in possession of anything herein enumerated in violation thereof, such officer shall seize and hold the same and all thereof subject to the order of the court, and shall immediately arrest and as soon as possible make proper complaint in any court having jurisdiction against any such person or persons duly charging the offense committed; and every such officer shall in any event summarily arrest any person found committing any act forbidden by this Act, and make complaint against him and do all in his power to enforce the provisions of this Act. Provided, that nothing in this act shall authorize any such officer to search any house actually occupied as a dwelling or seize any property therein contained without a regular process therefor.*

Sec. 8. Penalties for violation.—That Section 25, Chapter 455, Laws of 1919, as amended by Section 15, Chapter 391, Laws of 1921, be and the same is hereby amended so as to read as follows:

"Section 25. (a) Any person who shall manufacture or sell liquor or any pharmacist who shall sell liquor in violation of this act shall, except as herein provided in subdivision (f), upon conviction for a first offense be punished by imprisonment in the county jail for not less than thirty days nor more than ninety days, and by a fine of not less than \$150 nor more than \$300, and for a second and each subsequent offense shall be punished by imprisonment in the county jail for not less than six months nor more than one year and by a fine of not less than \$250 nor more than \$1,000.

(b) Any person who shall create, keep or maintain a nuisance shall be guilty of a misdemeanor, and be punished by a fine of not less than \$50 nor more than \$100, or by imprisonment in the county jail not less than thirty days nor more than ninety days.

(c) Any physician who shall knowingly give false prescription for intoxicating liquor or any prescription therefor containing a false statement or who shall give a prescription for liquor for any other than medicinal purposes or to any person who is not in fact suffering from any illness *requiring such prescription* shall, upon conviction thereof be punished by a fine of not less than \$50 nor more than \$300, and by imprisonment in the county jail for not less than thirty days nor more than ninety days.

(d) Any person who shall knowingly present any false, fraudulent, forged or altered prescription or affidavit provided for or required by this act, or who shall forge or alter any such prescription or affidavit, upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$300 and by imprisonment in the county jail for not less than thirty nor more than ninety days.

(e) Any person who shall wilfully fail or neglect to perform any duty imposed by this Act or who shall violate any of the provisions thereof, for which no special penalty or forfeiture is prescribed herein shall upon conviction thereof for a first offense be punished by imprisonment in the county jail for not less than thirty days nor more than ninety days and by a fine of not less than \$50 nor more than \$300, and for a second and each subsequent offense shall be punished by imprisonment in the county jail for not less than sixty days nor more than six months, and by a fine of not less than \$100 nor more than \$500.

(f) *Any person who shall sell liquor to anyone under 21 years of age in violation of this act shall be guilty of a felony.*

It shall be the duty of the prosecuting officer to ascertain whether the defendant has been previously convicted and to plead prior conviction in any complaint, information or indictment against him.

(g) *Any sheriff, deputy sheriff, constable, marshall, policeman or other peace officer who shall maliciously and without probable cause procure a search warrant to be issued and executed, and every such sheriff, deputy sheriff, constable, marshall, policeman or other peace officer, who in executing a search warrant, shall wilfully exceed his authority, or exercise it with unnecessary severity, or fail to make, file and serve an inventory as required by law, shall be punished by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment in the county jail for not less than six months, or by both such fine and imprisonment.*

Sec. 9. Distribution of fines.—That Chapter 455, General Laws of Minnesota for 1919, be and the same is hereby amended by adding thereto immediately after Section 25 thereof a new Section designated as "Section 25 A" as follows:

"Section 25 A. One-half of all moneys paid into the county treasury of any county in this state on account of fines imposed for violation of any law of this state relating to intoxicating liquor shall be placed in a separate fund to be designated and known as the Law Enforcement Fund of the county. Such fund may be used by the county sheriff for the purpose of conducting investigations and securing evidence of the violation of any such law for no other purpose. All disbursements from such fund shall be made upon written request of the county sheriff by auditor's warrant countersigned by a judge of the district court."

Sec. 10. Unconstitutionality of one section not to affect balance of law.—If any provision or part of this Act be held un-

constitutional or invalid, it shall not invalidate or in any way affect any other provision or part thereof.

Approved April 21, 1923.

CHAPTER 417—H. F. No. 1063.

An act to provide in certain cases for the separation from cities containing 10,000, or less, of unplatted agricultural lands included in the corporate limits of such city, and attaching same to adjoining towns or townships in the same county, and defining the duties of the county commissioners in such cases.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Agricultural lands may be detached from cities.—The owners of 75 per cent, or more, of any contiguous unplatted tracts or parcels of land containing not less than 300 acres, included within the corporate limits of any city in this state containing 10,000 inhabitants or less, and used and occupied exclusively for agricultural purposes, may petition the district court of the county in which such tracts and parcels of land are situated for a decree detaching such tracts and parcels of land from such city. Upon the filing of such petition the court shall fix a time for the hearing thereon which shall not be less than thirty days from the date of the filing of such petition: and the petitioner shall serve or cause to be served a notice of such hearing upon the mayor or city clerk of such city at least twenty days before the time fixed for such hearing.

Sec. 2. Court to order tracts detached.—If, upon the hearing, the court shall find that such tracts and parcels of land are of the nature and quantity as hereinbefore set forth, and that they may be detached from such city without unreasonably affecting the symmetry of the settled portions of such city, it may grant such decree, and said tracts and parcels of land shall thereupon become detached from such city for all purposes as effectively as if they had never been a part thereof.

Sec. 3. Detached part to become part of township.—Where there is no organized town or township government in the town from which said lands were detached exclusive of the city government of such city, it shall be the duty of the board of county commissioners of the county in which said lands are situated to attach any part or all of said lands so detached from such city by the decree of the court made under the provisions of this act to any towns or townships adjoining said lands and within the said county and thereafter said lands shall, in all things, be subject to the government of the township to which they are so attached.

Sec. 4. Not to affect other statutes.—The provisions of this act shall be supplemental to and in addition to the provisions of