

1936 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1936)  
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by

WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR. }  
R. O. MASON } Assistant Editors  
J. S. O'BRIEN }

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**3199-61. Effective date.**—This act shall take effect July 1, 1936. (Jan. 27, 1936, Ex. Ses., c. 93, §11.)

**3199-62. Suspension of other laws and of this act.**—The operation of Laws 1923, Chapter 336, Section 3 [§4617-1], and all other acts and parts of acts inconsistent herewith are hereby suspended, during the time payments shall be made to the state of Minnesota, as aid to the blind under the Federal Social Security Act; but if at any time after payments have been commenced by the United States Government in accordance with Title X of the Social Security Act, same being Public number 271, 74th Congress [Mason's U. S. Code Anno., title 42, ch. 7], or any act

amendatory thereto, such payments shall be permanently discontinued, because of the repeal or amendment of Title X of said Social Security Act, or because of the failure of Congress to provide the necessary revenue, or because Title X of said Social Security Act shall have been declared unconstitutional by final decision of the Supreme Court of the United States, then this act shall become suspended and inoperative and relief to blind persons shall be paid as provided in Laws 1923, Chapter 336, Section 3 [§4617-1], until the United States Government shall resume such payments to the state of Minnesota as aid to the blind under said Social Security Act. (Jan. 27, 1936, Ex. Ses., c. 93, §12.)

## CHAPTER 16

### Intoxicating Liquors

Act Apr. 13, 1933, c. 214, provides for convention to consider repeal of 18th amendment to federal constitution. It is temporary and specific, and is omitted from this compilation.

#### PROHIBITORY LAW

##### §200. [Repealed].

Repealed. Laws 1933, c. 130.

##### 1. In general.

It would be unlawful for grocer to possess or to sell wort knowing that it was designed or intended for use in the manufacture of beer. Op. Atty. Gen., May 25, 1932.

##### 4. City ordinances.

A complaint charging one only with possession of intoxicating liquor was insufficient under an ordinance prohibiting the maintaining of a liquor nuisance. State v. Tremont, 185M101, 240NW118. See Dun. Dig. 4938a.

##### 5. Indictment.

Complaint held not sufficient to sustain conviction for manufacture of beer. Op. Atty. Gen., May 25, 1932. 174M457, 219NW770.

Indictment charging maintenance of a liquor nuisance, held sufficient. 177M278, 225NW20.

##### 6. Evidence.

Evidence held to warrant conviction for maintenance of a liquor nuisance. 177M278, 225NW20.

Judicial notice is taken that moonshine is an intoxicating beverage. The word "potable" means drinkable. 177M500, 225NW431.

##### §200-1 to §200-4. [Repealed].

This act (Mar. 27, 1933, c. 115) prohibited the manufacture, sale or transportation and the possession of liquor containing more than 3.2% of alcohol by weight. It was repealed by Act Jan. 6, 1934, Ex. Ses., c. 46, §58, post, §3200-58.

##### Annotations under Act Mar. 27, 1933, c. 115.

In view of Laws 1933, c. 115, a city may require from licensee a bond conditioned upon observance of city ordinance but not upon observance of state or federal law. Op. Atty. Gen., May 13, 1933.

This act repeals Mason's Stats., §3230. Op. Atty. Gen., Aug. 19, 1933.

##### 1.

Wine of less than 3.2% of alcohol may be sold without restriction. Op. Atty. Gen., Apr. 20, 1933.

Any ordinance defining intoxicating liquor to mean any liquid containing more than ½ of 1 per centum of alcohol is in conflict with this act. Op. Atty. Gen., July 10, 1933.

Liquor or persons seen drinking intoxicating liquor in an automobile is not admissible for prosecution under this act, but would be admissible in prosecution for drunken driving or other criminal proceeding. Op. Atty. Gen., Sept. 18, 1933.

##### 2.

Search warrants may not be issued under authority of this act. Op. Atty. Gen., Apr. 27, 1933.

There is now no law authorizing issuance of search warrant to discover evidence of violation of liquor laws. Op. Atty. Gen., June 27, 1933.

City of St. James under its home rule charter may authorize search warrants by city ordinance. Op. Atty. Gen., June 28, 1933.

There is now no law authorizing officers to make search for intoxicating liquors and only method of enforcing such laws is to hire detectives for purpose of making purchases. Op. Atty. Gen., June 21, 1933.

A sheriff has legal right to seize alcohol being transported in automobile, but he may not seize the vehicle. Id.

City, as condition of granting of beer license, may require applicant to sign waiver of rights as to searches and seizures. Op. Atty. Gen., July 20, 1933.

After repeal of 18th amendment and prior to action by legislature, it was lawful to transport non-beverage alcohol into state. Op. Atty. Gen., Oct. 31, 1933.

Advertisements for agents to sell hard liquor after it should become legal to sell it were not unlawful advertisements soliciting orders for intoxicating liquors. Op. Atty. Gen., Nov. 15, 1933.

Intoxicating wines and liquors could be manufactured, sold and transported into state between repeal of 18th amendment and time laws were passed on subject by state legislature, if such be used for chemical, mechanical, medicinal, pharmaceutical, scientific, industrial or sacramental purposes, without regard to provisions of federal law. Op. Atty. Gen., Dec. 7, 1933.

##### 3.

This act does not take jurisdiction from justice or municipal courts. Op. Atty. Gen., Apr. 12, 1933.

##### 4.

Enforcement provisions of licensed public drinking places and local option laws are not now effective. Op. Atty. Gen., May 18, 1933.

This act repeals all local and county option laws. Op. Atty. Gen., Dec. 8, 1933.

#### BEER BILL

**§200-5. Municipalities may issue licenses for sale of non-intoxicating beverages.**—There is hereby conferred upon the governing body of each county, city, village and borough in the state, the authority to license and regulate the business of vendors at retail and/or wholesale of non-intoxicating malt liquors within their respective jurisdictions, to impose a license fee therefor, and to provide for the punishment of any violation of any such regulations according to the provisions of law. Provided, that no such business may be licensed by the County Board to be located in any town, unless the consent of the governing body of such town, if organized, is filed with the application for such license. (Act Mar. 27, 1933, c. 116, §1.)

Sale of nonintoxicating malt liquors is subject to regulation under police power of state; and delegating to village and city councils authority to license and regulate is a valid exercise of police power. Bernick v. C., 191M128, 253NW369. See Dun. Dig. 4913.

Bond given to city by retailer of non-intoxicating liquor gave city no right to face of bond as penalty on violation of law, but only such damages as city could show it had suffered from such a violation. City of St. Cloud v. W., 261NW585. See Dun. Dig. 4918.

No license can be issued for sale of non-intoxicating malt liquor by county board unless consent of township in which it is to be sold is filed with the application for license. Op. Atty. Gen., Apr. 1, 1933.

Wholesaler may not sell and deliver non-intoxicating malt liquors direct to consumers in their homes in municipalities not granting licenses for the sale of such liquor. Op. Atty. Gen., Apr. 4, 1933.

Licenses or permits cannot be granted until the ordinance is in full force and effect. Op. Atty. Gen., Apr. 4, 1933.

County boards have authority to license non-intoxicating malt liquor sales and to provide penalties for violations of regulations imposed. Op. Atty. Gen., Apr. 6, 1933.

County board has exclusive right to license and regulate sale, the only duty resting on township board being to approve or disapprove applications for license, and town is not entitled to share in license money. Op. Atty. Gen., Apr. 6, 1933.

Where Home Rule city charter contains a method of enacting ordinances city council has power to license vendors of non-intoxicating malt liquor and regulate the sale thereof by ordinance enacted in the manner provided by the charter. Op. Atty. Gen., Apr. 7, 1933.

Only duty and authority imposed upon boards of township supervisors by this act is that of either approving or disapproving applications for licenses, the determina-

tion of amount of license fee and making of regulations being for the county board. Op. Atty. Gen., Apr. 7, 1933.

City or village council cannot stop manufacture or sale of non-intoxicating malt liquor direct to consumers in two gallon lots or more. Op. Atty. Gen., Apr. 8, 1933.

The power to license herein conferred on municipalities can only be exercised by enacting an ordinance before issuance of license or permit. Op. Atty. Gen., Apr. 10, 1933.

City, instead of imposing a regular license fee on "On Sale" vendors, may collect a percentage, based on sales, from such vendors, in the form of a sales tax. Op. Atty. Gen., Apr. 11, 1933.

A person selling malt liquors in various places in the same village must obtain separate licenses for each establishment. Op. Atty. Gen., Apr. 13, 1933.

An ordinance must be adopted before municipality can issue licenses. Op. Atty. Gen., Apr. 15, 1933.

State board of control may prohibit the importation of beer into the quarters or homes furnished employes of state institutions under its jurisdiction, and also into the grounds of such institutions. Op. Atty. Gen., Apr. 18, 1933.

County has no right to impose additional license fee in municipalities which have granted "On Sale" licenses. Op. Atty. Gen., Apr. 10, 1933.

A partnership operating business in a village is entitled to license under ordinance limiting license to residents, though part of partners live outside village. Op. Atty. Gen., Apr. 15, 1933.

Under village ordinance limiting licenses to residents, a Minnesota corporation having its principal place of business and offices elsewhere but operating in village was entitled to a license. Id.

Summer resorts are entitled to license. Id.

County can fix fee for license for each individual case depending upon facts and circumstances. Op. Atty. Gen., Apr. 15, 1933.

License money collected by county belongs to county and should be credited to county revenue fund. Op. Atty. Gen., Apr. 15, 1933.

Ordinance must be adopted before license can be issued by city. Op. Atty. Gen., Apr. 15, 1933.

State board of control may prohibit sale of beer in homes furnished employes of state institutions on state land. Op. Atty. Gen., Apr. 18, 1933.

Licenses issued by county are not transferable. Op. Atty. Gen., Apr. 20, 1933.

No refund may be granted where license is surrendered before expiration of term. Op. Atty. Gen., Apr. 20, 1933.

This act applies only to malt liquors and wine of less than 3.2% of alcohol may be sold without license or permit. Op. Atty. Gen., Apr. 20, 1933.

County board of Hennepin County may issue license to Minneapolis Park Board to sell non-intoxicating malt liquors at golf course and airport situated outside city limits. Op. Atty. Gen., Apr. 22, 1933.

Park board of village of Excelsior may be licensed to sell non-intoxicating malt liquors. Op. Atty. Gen., Apr. 22, 1933.

A distributor acting as agent of grocery houses and other firms who are jobbers of beer can qualify without license only if title in beer is retained by manufacturer and agent is not an independent seller. Op. Atty. Gen., Apr. 24, 1933.

City of Two Harbors may regulate sale of malt to minors. Op. Atty. Gen., May 8, 1933.

City of Minneapolis has authority to grant "On Sale" license at soldiers' home. Op. Atty. Gen., June 6, 1933.

County board with approval of state fair board and board of town in which state fair grounds are situated may issue license to sell non-intoxicating beer to a restaurant to be located on fair grounds for three days. Op. Atty. Gen., June 17, 1933.

If licenses were permitted to sell beer on fair grounds, it could only be secured from county board with approval of township board and consent of county fair board. Op. Atty. Gen., June 21, 1933.

Licenses to sell beer at restaurants on fair grounds are to be obtained from governing body of village bureau or city, if grounds are within incorporated municipality, and from county board if grounds are located in organized township, subject to approval of township board and consent of fair board, licenses to be issued in name of operator of restaurant. Op. Atty. Gen., June 26, 1933.

City, as condition of granting of beer license, may require applicant to sign waiver of rights as to searches and seizures. Op. Atty. Gen., July 20, 1933.

Ordinance under which license is granted may be amended so as to impose different regulations. Op. Atty. Gen., Aug. 2, 1933.

One operating place of business in village is entitled to have license transferred when he moves to another place in the village. Op. Atty. Gen., Aug. 7, 1933.

On sale license may not be transferred temporarily from permanent place of business to concession at fair grounds. Op. Atty. Gen., Aug. 22, 1933.

Statutes prohibiting sale of liquor on election day refer to intoxicating liquors and not to beer. Op. Atty. Gen., Aug. 30, 1933.

License issued by county for selling beer at county fair may be transferred to licensee's regular place of business in county provided such place of business is not within a village or city. Op. Atty. Gen., Sept. 11, 1933.

City may prohibit sale of liquors to people receiving poor aid. Op. Atty. Gen., Oct. 2, 1933.

Town board cannot pass by-law prohibiting sale of beer after 12 P. M. and on Sunday, its only authority being approval or disapproval of applications for licenses. Op. Atty. Gen., Dec. 11, 1933.

Village may limit sales by wholesalers to retail dealers but cannot impose fee other than that paid by retailers for "Off Sale" license and a wholesaler licensed in one municipality can sell in other municipalities without additional license. Op. Atty. Gen., Mar. 19, 1934.

Wholesaler must secure license where business is situated. Op. Atty. Gen., Mar. 22, 1934.

Mayor of New Ulm has no power to veto resolution of council granting an "Off Sale" liquor license. Op. Atty. Gen., Mar. 23, 1934.

A city of 5,000 people or more may prohibit dancing in places where nonintoxicating malt liquors are sold. Op. Atty. Gen. (802a-17), Apr. 23, 1934.

County board may prohibit dancing in places where nonintoxicating malt liquors are sold. Id.

There is no state law prohibiting members of a club and their families from holding dances and selling non-intoxicating liquors thereat under license. Id.

A village may within reasonable limitations regulate the closing and opening hours of restaurants, chicken shacks and night clubs and provide reasonable regulations upon which vendors may sell nonintoxicating malt beverages. Op. Atty. Gen. (477a), Apr. 24, 1934.

Authority of town boards is limited to approval or disapproval of applications for licenses, and county receives fees. Op. Atty. Gen. (217b-4), May 9, 1934.

Resolution of county commissioners to revoke licenses without notice is valid. Op. Atty. Gen. (218g-14), June 2, 1934.

Council can grant a license to a member of village council or to an officer of the village, if such person takes no part in the granting of the license. Op. Atty. Gen. (218g), June 5, 1934.

Graduated license fees based on sales may be imposed. Op. Atty. Gen. (217b-7), July 10, 1934.

City has authority to pass ordinance regulating closing hours of all places of business, including restaurants, that dispense nonintoxicating malt beverages, and may do this during the life of licenses. Op. Atty. Gen. (217b), July 25, 1934.

Licenses may be transferred from one location to another. Op. Atty. Gen. (217b-6), Aug. 3, 1934.

Licenses may be granted to councilman or clerk of a village. Op. Atty. Gen. (217b-6), Aug. 3, 1934.

Though county board has authority to fix a lesser fee for licenses to bona fide club than for other types of business, the fee must be uniform for all licenses of the same class and a license cannot be donated to a club. Op. Atty. Gen. (217b-2), Aug. 3, 1934.

Granting a permit to one under age of 21 would be futile, as licensee could not purchase liquor for resale. Op. Atty. Gen. (217f-3), Oct. 13, 1934.

City council may pass ordinance permitting revocation of malt liquor licenses without notice. Op. Atty. Gen. (217b-1), Jan. 25, 1935.

Non-intoxicating malt liquors can legally be sold to Indians or persons of part Indian blood insofar as state laws are concerned, but such a sale might be a violation of federal laws. Op. Atty. Gen. (218j-9), Jan. 29, 1935.

Municipality can own liquor store but not a nonintoxicating beer parlor. Op. Atty. Gen. (218g-13), Feb. 1, 1935.

City council is not compelled to revoke license for violation of ordinance. Op. Atty. Gen. (218g-14), Apr. 2, 1935.

License cannot be revoked by county board merely because a delegation appeared before it in opposition to the license already granted. Op. Atty. Gen. (217b-8), Apr. 24, 1935.

For valid reasons village may prohibit sale of malt liquors earlier in residential districts than in business districts. Op. Atty. Gen. (217b-7), May 29, 1935.

County may require a bond as a prerequisite to securing a license to sell malt liquors. Op. Atty. Gen. (217b-2), June 13, 1935.

Village may by ordinance provide that no license shall be issued to any person or corporation established in business in the village for less than one year. Op. Atty. Gen. (217b-7), June 24, 1935.

Ordinance merely prohibiting sale of malt liquors after midnight does not render it an offense to give away liquor after that hour. Op. Atty. Gen. (217c), July 11, 1935.

Ordinance imposing residence requirements of one year would be valid. Op. Atty. Gen. (217c), July 17, 1935.

Gift of malt liquor to those buying dance tickets after closing hours constituted a sale. Op. Atty. Gen. (510a-1), July 30, 1935.

**§200-6. Unlawful to sell unless licensed.**—It shall be unlawful to sell non-intoxicating malt liquors, at retail, or wholesale, except when licensed as hereinafter provided. There shall be two kinds of licenses, viz:

(a) "On Sale" licenses shall permit the licensee to sell such non-intoxicating malt liquors for consumption on the licensed premises, and the license fee therefor shall be Ten (\$10.00) Dollars per annum, unless the

county, city, village or borough wherein the premises are situated shall fix a higher fee to be paid to such county, city, village or borough. "On Sale" licenses shall be granted only to drug stores, restaurants, and hotels and Bona Fide clubs; provided, however, that no manufacturer of such non-intoxicating malt liquors shall have any ownership, in whole or in part, in the business of any licensee holding an "On Sale" license. A Bona Fide Club under this act is an organization for social or business purposes or for intellectual improvement, or for the promotion of sports, where the serving of such non-intoxicating malt liquors is incidental and not the major purpose of the Club.

(b) "Off Sale" licenses shall permit the licensee to sell non-intoxicating malt liquors in original packages for consumption off the premises only, and the license fee therefor shall be Five (\$5.00) Dollars per annum.

(c) The Secretary of State may issue an "On Sale" license to any railroad company operating within the state which shall permit such railroad company to sell such non-intoxicating malt liquors in its dining cars, buffet cars, cafe cars and observation cars; such company shall keep a duplicate of such license posted in each car where such malt liquors are served. Each railroad company applying for such license shall pay to the Secretary of State a fee of Twenty-five (\$25.00) Dollars for such license and Twenty-five cents for each duplicate thereof, which fee shall be paid into the State Treasury.

A manufacturer of non-intoxicating malt liquor may, without license, sell such liquor to licensed dealers holding either "On Sale" or "Off Sale" licenses, and may sell and deliver the same in quantities of not less than two gallons, direct to consumers at their homes.

No manufacturer of non-intoxicating malt liquor, nor any affiliate or subsidiary company of such manufacturer, shall sell such liquor except as herein restricted. An affiliate or subsidiary company shall be one in which such manufacturer or its stockholders own a majority of the stock.

(d) Licenses hereunder shall be issued only to persons who are citizens of the United States and who are of good moral character and repute. (Act Mar. 27, 1933, c. 116, §2.)

Where dining room and cafe are part of accommodations of hotel and under same ownership one license is sufficient. Op. Atty. Gen., Apr. 1, 1933.

A person or corporation selling malt liquors in various places in same village should be required to obtain separate licenses for each establishment. Op. Atty. Gen., Apr. 13, 1933.

One operating a hotel and drugstore in same building and serving meals both in hotel and drugstore from one kitchen must secure "On Sale" and "Off Sale" license for both. Op. Atty. Gen., Apr. 13, 1933.

An incorporated community park in a village may be granted an "Off Sale" license but may not be issued an "On Sale" license unless there is operated thereon a drug store, restaurant, hotel, or bona fide club. Op. Atty. Gen., May 23, 1933.

Golf club could take no part in selling of beer at club house but members may purchase beer from any restaurant paying for same at time of purchase and have such beer cared for by manager of club house. Id.

One operating lunch wagon traveling from place to place may obtain only an "Off Sale" license, to be approved by each town board in which he makes any sales, and he must also procure separate licenses from each village or city. Op. Atty. Gen., May 26, 1933.

In absence of any local restriction, an "Off Sale" license may be granted to an individual to sell beer at county fair grounds. Id.

An "On Sale" license may not be granted to operator of lunch or meal stand at county fairs. Id.

An "On Sale" license cannot be granted to restaurant on wheels, but an "Off Sale" license may be granted. Id.

A lodge may give away beer at a dance where there is no intention to evade law requiring license. Op. Atty. Gen., July 15, 1933.

3.2 beer may not be sold under an intoxicating liquor license. Op. Atty. Gen. (217a), June 18, 1934.

It is not permissible for a person to sell 3.2 beer by the bottle if he has a federal license but no off or on sale municipality wherein he wishes to sell the beer. Op. Atty. Gen. (217b-8), Oct. 22, 1934.

One selling liquor without license required by village ordinance may be prosecuted either under state law or under ordinance. Op. Atty. Gen. (217e-2), Nov. 15, 1934.

(a) A store designated as a "drug store" operated by one who is not a registered pharmacist and who has none in his employ, and which sells proprietary drugs, but fills no prescriptions, is not a "drug store" to which "On Sale" license may be granted. Op. Atty. Gen., Apr. 3, 1933.

The word, "premises" as applied to a hotel means the entire hotel so that liquor consumed in a hotel room is consumed on the "premises." Op. Atty. Gen., Apr. 7, 1933.

"On Sale" licenses may not be granted to dance halls though lunches are sold at dances. Op. Atty. Gen., Apr. 8, 1933.

Holder of "On Sale" license cannot sell original packages knowing that they will be removed from the premises and contents consumed elsewhere, but he must also an "On Sale" license is necessary for sale in main lodge.

Where father buys beer in an "On Sale" place for himself and a minor son, the sale is to the father and legal. Op. Atty. Gen., Apr. 10, 1933.

County may not impose an additional license fee in municipalities located within said county, which have granted "On Sale" licenses to dealers. Op. Atty. Gen., Apr. 10, 1933.

Hotel must have "On Sale" license to deliver malt liquors to guest's room. Op. Atty. Gen., Apr. 10, 1933.

Owner of hotel and drug store in same building must procure "On Sale" and "Off Sale" licenses for both hotel and drug store in order to sell malt liquor "On Sale" and "Off Sale" in both places; in such case there would be two separate "premises," though drug store be located in the hotel building and under same management. Op. Atty. Gen., Apr. 13, 1933.

Municipality may base license fee upon percentage of sales. Op. Atty. Gen., Apr. 11, 1933.

Where summer resort maintains main lodge and cabins an "On Sale" license is necessary for sale in main lodge for consumption in cabins. Op. Atty. Gen., Apr. 15, 1933.

A passenger launch is not entitled to an "On Sale" license. Op. Atty. Gen., May 10, 1933.

Manufacturers of malt liquors may provide their distributors with equipment necessary in sale of beer. Op. Atty. Gen., May 11, 1933.

Summer resort keeper will not be permitted under "On Sale" license to sell and dispense beverages in place separate from where meals are served. Op. Atty. Gen., May 18, 1933.

A pool room is not entitled to an "On Sale" license. Op. Atty. Gen., June 15, 1933.

County fair association is not entitled to receive an "On Sale" license for sale of beer. Op. Atty. Gen., June 21, 1933.

Where one man operates building containing sleeping quarters, restaurant and pool room, he may not sell malt liquor in restaurant portion to patron of hotel to be carried by purchaser to pool room and there consumed, nor can hotel proprietor under "On Sale" license sell liquor in pool room to be consumed in such room. Op. Atty. Gen., June 23, 1933.

Whether a particular place of business is a restaurant is primarily question of fact for governing body of municipality issuing licenses, but length of time business has been in existence or period of its future duration is not controlling. Op. Atty. Gen., June 26, 1933.

One operating bona fide club may sell beer in several parts of same building under one license. Op. Atty. Gen., June 29, 1933.

Concession men at county fair are not entitled to "On Sale" license. Op. Atty. Gen., June 21, 1933.

Hotel does not need to serve food in order to entitle it to license for sale of beer. Op. Atty. Gen., July 24, 1933.

Whether a night club is a restaurant entitled to sell beer is a question of fact. Op. Atty. Gen., Dec. 22, 1933.

Malt license may not be granted to a legion post unless it is in fact a club. Op. Atty. Gen., Mar. 23, 1934.

A grocery store may not have an "On Sale" license. Op. Atty. Gen. (218g), June 15, 1934.

(b) A wholesaler if licensed in jurisdiction where he maintains a place of business may sell without further license in other jurisdictions where he maintains no place of business. *Bernick v. C.*, 191M128, 253NW369.

The words, "Original package," as used in this act mean the package in which the non-intoxicating malt liquor was received by the dealer and distributor, the usual and customary manner of delivery being in kegs and cases. Op. Atty. Gen., Apr. 1, 1933.

Agencies for sale of beer which are branch offices of manufacturer may make sales without licenses from municipalities, but agencies which are distributors or wholesalers must have "Off Sale" licenses from the municipality in which the distributing plant is situated. Op. Atty. Gen., Apr. 1, 1933.

Wholesaler must have an "Off Sale" license from the municipality where his distributing plant is located. Op. Atty. Gen., Apr. 7, 1933.

Wholesale distributor holding "Off Sale" license from the municipality where its distributing plant is located may sell to licensed dealers any place in the state of Minnesota without obtaining further licenses, but if wholesale distributor sells direct to consumers a license

must be obtained from each municipality in which such sales are made. Op. Atty. Gen., Apr. 10, 1933.

A hotel which does not desire to serve liquors in dining room may not get along with an "Off Sale" license and serve liquors to guests in their rooms. Op. Atty. Gen., Apr. 10, 1933.

A wholesaler holding an "Off Sale" license from municipality where its distributing plant is located, may sell licensed dealers any place in state without further license, but if wholesaler sells direct to consumers, it is necessary to obtain a license in each municipality in which sales are made. Op. Atty. Gen., Apr. 10, 1933.

Summer resort owner may not sell beer to cabins under an "Off Sale" license, but he may sell unopened beer to renters of boats for consumption on lake. Op. Atty. Gen., May 18, 1933.

One is not permitted to sell beer out of keg to be carried off premises in a container. Op. Atty. Gen., May 26, 1933.

The test as to "original packages" is unit in which bottles of beer are packed for transportation purposes, and number of bottles is not material element. Op. Atty. Gen., May 19, 1933.

Storekeeper also owning tourist cottages on adjoining lot could take out "Off Sale" license. Op. Atty. Gen., June 5, 1933.

Beer cannot be sold by the bottle on an "Off Sale" license unless shipped individually as an original package. Op. Atty. Gen., June 6, 1933.

Original package of malt liquors may contain either one or more bottles packed in a carton or case, but such carton or case may not be packed in larger containers. Op. Atty. Gen., June 15, 1933.

There is no limit to amount of beer that may be sold at one time by holder of "Off Sale" license. Op. Atty. Gen., July 12, 1933.

There is nothing in state law to prohibit restaurant owner with "Off Sale" license to sell beer in lots of 15 or 20 cases at a time, though indications point to fact that he may represent some brewery, and, notwithstanding that it is unfair as to an agent of another brewing company, required to pay greatly larger fee of a distributor. Op. Atty. Gen., Dec. 6, 1933.

A grocery store or any other business may have an "Off Sale" license. Op. Atty. Gen. (218g), June 5, 1934.

(c)

A manufacturer or his agent may sell to consumers in municipalities where no regulations are in effect permitting sales under license or granting license. Op. Atty. Gen., Apr. 24, 1933.

Manufacturers or their agents cannot sell malt liquors to consumers from warehouses or trucks parked on streets. Id.

Manufacturer has right to sell direct to consumer in a municipality without a license. Op. Atty. Gen., Apr. 27, 1933.

A city may not prohibit sale of un-intoxicating malt liquor by manufacturer. Id.

A village may not require manufacturer to obtain license to sell beer in lot of not less than 2 gallons. Id.

(d)

Village council may grant a license for sale of beer to one of its members. Op. Atty. Gen., July 12, 1933.

**3200-7. Unlawful to sell to persons under 21 years of age.**—It shall be unlawful to sell such liquor to any person under twenty-one years of age. (Act Mar. 27, 1933, c. 116, §3.)

An ordinance prohibiting sale to students is invalid so far as it applies to students over 21. Op. Atty. Gen., Apr. 11, 1933.

A sale of beer to one who gives it to his minor son is legal. Op. Atty. Gen., Apr. 10, 1933.

A city ordinance prohibiting sale of non-intoxicating malt liquors to students over 21 years of age would be invalid. Op. Atty. Gen., Apr. 11, 1933.

A person under 21 years of age may be employed to sell beer. Op. Atty. Gen., May 31, 1933.

It is permissible to sell beer to older person and permit him to treat minor, but if older person buys for minor and minor pays him therefor, such older person would be guilty of two offenses, one in making sale to minor and selling without license. Op. Atty. Gen., July 31, 1933.

Granting a permit to one under age of 21 would be futile, as licensee could not purchase liquor for resale. Op. Atty. Gen. (217f-3), Oct. 13, 1934.

Sale of malt liquors to an adult to give it to a minor child is not in violation of this section. Op. Atty. Gen. (217f-3), July 11, 1935.

**3200-8. Duration of licenses.**—All licenses for the sale of non-intoxicating malt liquors shall be issued for a period of one year, except that for the purpose of co-ordinating the time of expiration of licenses in general, such licenses may be issued for a shorter time to expire at a given period of the year in which case a pro rata fee shall be charged. (Act Mar. 27, 1933, c. 116, §4.)

County board has no authority to issue licenses for a period of less than one year, unless all licenses are so issued for a period of less than one year for the purpose

of establishing a uniform expiration date. Op. Atty. Gen., Apr. 18, 1933.

An ordinance must be adopted before licenses can be issued under non-intoxicating malt liquor law. Op. Atty. Gen., Mar. 10, 1933.

County commissioners have no authority to issue licenses for period of less than one year. Op. Atty. Gen., Apr. 18, 1933.

If license was issued for less period than one year for purpose of co-auditing expiration date of all licenses, a pro rata reduction may be made. Id.

New application for a license must be made each year. Op. Atty. Gen., Mar. 26, 1934.

**3200-9. Penalty for violation.**—Any person violating the provisions of this act shall be guilty of a misdemeanor. (Act Mar. 27, 1933, c. 116, §5.)

County attorney does not owe duty to prosecute violation of malt liquor law consisting of sale of such liquor in village refusing to grant licenses. Op. Atty. Gen., Oct. 31, 1933.

One selling liquor without license required by village ordinance may be prosecuted either under state law or under ordinance. Op. Atty. Gen. (217e-2), Nov. 15, 1934.

**3200-10. Repeal; non-intoxicating malt liquors excluded.**—All laws and parts of laws inconsistent herewith are hereby repealed, but this act shall not be construed as repealing any law or ordinance relating to the sale of intoxicating liquor. Nothing herein contained shall apply to non-intoxicating malt liquor containing less than one-half of one per cent of alcohol by volume. (Act Mar. 27, 1933, c. 116, §6.)

Sec. 7 of Act Mar. 27, 1933, cited, provides that the act shall take effect from its passage.

There is now no law authorizing enforcement officers to make search for intoxicating liquors, but detectives may be retained for purpose of making purchases and their evidence would be admissible. Op. Atty. Gen., May 15, 1933.

This act supersedes provision in South St. Paul Home Rule Charter insofar as it relates to licensing and regulating sale of non-intoxicating malt liquors. Op. Atty. Gen., May 18, 1933.

#### REPEAL OF FORMER LAWS

**3200-11. Laws repealed.**—That Chapter 455, Laws of Minnesota of 1919; Chapter 65, Extra Session Laws of Minnesota of 1919; Section 1, Chapter 335, Laws of Minnesota of 1921; Chapter 338, Laws of Minnesota of 1921; Chapter 391, Laws of Minnesota of 1921; Section 2 of Chapter 393, Laws of Minnesota of 1923; Chapter 416, Laws of Minnesota of 1923; Section 2, Chapter 221, Laws of Minnesota of 1925; Chapter 109, Laws of Minnesota of 1929; Section 2, Chapter 249, Laws of Minnesota of 1929; Chapter 83, Laws of Minnesota of 1931; Chapter 305, Laws of Minnesota of 1931, be and the same are hereby repealed. (Act Mar. 31, 1933, c. 130.)

This act repeals Laws 1921, c. 335, sec. 2 (Mason's Minn. Stat., sec. 3230), providing for seizure and disposition of intoxicating liquors. Op. Atty. Gen., Apr. 4, 1933.

This act repealed the majority of the state intoxicating liquor laws including §3220 relating to search warrants. Op. Atty. Gen., Apr. 15, 1933.

Sheriff agreeing in 1932 to pay \$25 to detective for each conviction under liquor laws could pay such amount for convictions occurring in pending cases after passage of this act. Op. Atty. Gen., Apr. 28, 1933.

In view of Laws 1933, c. 130, there is now no law authorizing law enforcement officers to make search for intoxicating liquors, but detective may be retained for purpose of making purchases and their evidence would be admissible. Op. Atty. Gen., May 15, 1933; June 21, 1933.

A sheriff has legal right to seize alcohol being transported in automobile, but he may not seize the vehicle. Op. Atty. Gen., June 21, 1933.

Abatement proceedings on behalf of state may not now be brought by virtue of repealed §§3200 to 3228. Id.

There is now no law authorizing issuance of search warrant to discover evidence of violation of liquor laws. Op. Atty. Gen., June 27, 1933.

City of St. James under its home rule charter may authorize search warrants by city ordinance. Op. Atty. Gen., June 28, 1933.

Act did not repeal local ordinances. Op. Atty. Gen., July 10, 1933.

#### LIQUOR CONTROL ACT

**3200-21. Construction of terms.**—The terms "intoxicating liquor" and "liquor" whenever used in this Act, shall mean and include ethyl alcohol and include distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 per cent of alcohol

by weight. The terms "sale" and "sell" shall mean and include all barter, and all manners or means of furnishing intoxicating liquor or liquors as above described in violation or evasion of law. "Off sale" shall mean the sale of liquor in original packages in retail stores for consumption off or away from the premises where sold. "On sale" shall mean the sale of liquor by the glass for consumption on the premises only. The term "wholesale" shall mean and include any sale for purposes of re-sale. The term "manufacturer" shall include every person, who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending, or by the combination of different materials shall prepare or produce intoxicating liquors for sale. The term "wholesaler" shall mean any person, engaged in the business of selling intoxicating liquor to retail dealers. The term "person" shall include the meaning extended thereto by Mason's Statutes, 1927, Section 10933.

The term "package" or "original package" shall mean and include any container or receptacle holding liquor, which container or receptacle is corked or sealed.

The term "municipality" shall mean any city, village or borough.

"Hotel" as herein used, shall mean and include any establishment having a resident proprietor or manager, where, in consideration of payment therefor, food and lodging are regularly furnished to transients, and which maintains for the use of its guests in cities of the first class, not less than fifty guest rooms, in cities of second class, not less than twenty-five guest rooms, in all other cities, villages and boroughs not less than ten guest rooms with bedding and other usual suitable and necessary furnishings in each room, and which is provided at the main entrance with a suitable lobby, desk, and office for the registration of its guests on the ground floor, and which employs an adequate staff to provide suitable and usual service, and which maintains under the same management and control as the rest of the establishment and has as an integral part thereof a dining room with appropriate facilities for seating not less than thirty guests at one time, where the general public are, in consideration of payment therefor, served with meals at tables.

"Exclusive liquor store" as herein used shall be an establishment used exclusively for the sale of intoxicating liquor at retail, either on sale or off sale, or both. It shall be under control of an individual owner or manager and if located in municipalities other than cities of the first, second and third class, it may be owned and operated by said municipality as the governing body thereof shall direct.

"Restaurants" as herein used, shall mean any establishment, other than a hotel, under the control of a single proprietor or manager having appropriate facilities for the serving of meals and in cities of the first class for seating of not less than 50 guests at one time and in cities of the second and third class and villages of over 10,000 population and in such cities and villages having over 5,000 and not more than 10,000 population where "on sale" is provided in restaurants in lieu of the establishment of exclusive liquor stores, for seating such number of guests not less than 30 as the governing body of such municipality shall determine, and where in consideration of payments therefor, meals are regularly furnished at tables to the general public, and which employs an adequate staff to provide the usual and suitable service to its guests, and the principal part of the business of which is the serving of foods.

The term "club" shall mean and include any corporation duly organized under the laws of the State of Minnesota for civic, fraternal, social or business purposes or for intellectual improvement or for the promotion of sports, which shall have more than fifty members, and which shall for more than a year have owned, hired or leased a building or space in a build-

ing of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members and whose affairs and management are conducted by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents, or employees are paid directly or indirectly any compensation by way of profit from the distribution or sale of beverages to the members of the club, or to its guests beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the directors or other governing body.

The term "medicines" shall mean and include only such potable liquids as are prescribed by licensed physicians and dentists for therapeutic purposes, and United States Pharmacopeia and National Formulary preparations, and preparations used for the mitigation of disease for external and internal purposes which are usually sold in drug stores and intended for therapeutic purposes and not for beverage purposes.

The term "general food stores" shall mean any place of business carrying a stock of food supplies, and primarily engaged in selling food and grocery supplies to the public. (Act Jan. 6, 1934, Ex. Ses., c. 46, §1.)

Adoption of twenty-first Amendment to federal constitution did not render other constitutional provisions inapplicable to intoxicating liquor. Joseph Triner Corp. v. A. (USDC-Minn), 11FSuppl45.

One having an "off sale" license is guilty of crime of selling as a wholesaler where he sells an original package to one whom he has reason to know will resell the same. Op. Atty. Gen. (217d), July 23, 1935.

#### In general.

Statute does not place any restriction on amount of intoxicating liquors that may be sold by a retail dealer at any one time. Op. Atty. Gen., Mar. 5, 1934.

Telephone company may list liquor stores in classification of liquors though directories will be sent into dry territory. Op. Atty. Gen., Mar. 6, 1934.

Confiscated liquors may be sold under order of court and need not be destroyed. Op. Atty. Gen., Mar. 19, 1934.

Intoxicating liquor cannot be raffled at a bazaar or given as a prize in a drawing. Op. Atty. Gen. (218), May 5, 1934.

#### Hotel.

Dining room must be operated and controlled by same management that operates and controls hotel proper. Op. Atty. Gen., Jan. 29, 1934.

Hotel with "On Sale" license is permitted to sell cigarettes, candy, cigars, etc. Op. Atty. Gen., Mar. 23, 1934.

Hotel having "On Sale" license can dispense 3.2% beer. Id.

License to sell in hotel must be issued to owner of hotel and not to lessee of space therein. Op. Atty. Gen. (218g-17), May 15, 1935.

#### Off Sale.

One holding "Off Sale" license may ship or deliver liquor in other wet counties, but cannot mail it. Op. Atty. Gen., Mar. 5, 1934.

#### On sale.

Village council may permit patrons to drink at a bar. Op. Atty. Gen., Feb. 13, 1934.

#### Original package.

Term "original package" refers to individual bottles or other containers rather than to packages containing a number of individual bottles or other containers. Op. Atty. Gen. (217d), July 23, 1935.

#### Exclusive liquor store.

An exclusive liquor store may not sell tobacco, ice cream, soft drinks, nonintoxicating beer, etc. Op. Atty. Gen., Jan. 11, 1934.

Exclusive liquor store must be a separate and distinct premise from any other business and it would appear advisable that there be no connecting door between liquor store and cafe. Op. Atty. Gen., Jan. 29, 1934.

Exclusive liquor store and cafe could use same wash-room. Op. Atty. Gen., Jan. 29, 1934.

There should be no doorway between exclusive liquor store and garage sample room. Op. Atty. Gen., Jan. 29, 1934.

An exclusive liquor store can sell only intoxicating liquors. Op. Atty. Gen., Feb. 13, 1934.

Exclusive liquor store cannot be operated in connection with a restaurant or any other type of business. Op. Atty. Gen., Feb. 16, 1934.

One granted an "On Sale" license for an exclusive liquor store could not sell liquor as long as there was an opening between liquor store and adjoining bowling alley in view of Stillwater ordinance. Op. Atty. Gen., Feb. 16, 1934.

Exclusive liquor store cannot sell anything else. Op. Atty. Gen., Feb. 27, 1934.

Cigarette license should not be granted to an exclusive liquor store. Op. Atty. Gen., Mar. 26, 1934.

Exclusive liquor store must be separated from restaurant. Op. Atty. Gen. (218g-13), Apr. 13, 1934.

Exclusive liquor store is authorized to conduct a retail business only. Op. Atty. Gen. (218g-B), Apr. 19, 1934.

Proprietor of hotel having license for an exclusive liquor store may not sell liquor in the cafe part of the hotel. Op. Atty. Gen. (218j-10), May 22, 1934.

All revenue from a municipal exclusive liquor store should be turned over to village treasurer by the manager of the store and should be disbursed in the same manner as other village money. Op. Atty. Gen. (218c), July 25, 1934.

Electors of a city may vote on question of issuing licenses, but city council is to determine whether or not city shall establish a municipal liquor store or whether licenses shall be issued to private persons. Op. Atty. Gen. (218c-1), Feb. 7, 1935.

Village may purchase building for municipal liquor store without vote of people if funds are on hand. Op. Atty. Gen. (476b-1), Mar. 28, 1935.

Village councilman cannot be employed in exclusive liquor store operated by village. Op. Atty. Gen. (218g-13), Apr. 4, 1935.

All expenditures of exclusive liquor store operated by village should be approved by village council and paid in same manner as other village expenditures. Id.

Village councilman cannot receive compensation for services in connection with a municipal liquor store, and all employees must be hired by council and all obligations handled as other obligations of village. Op. Atty. Gen. (218g-13), Apr. 16, 1935.

An exclusive liquor store must be an independent establishment not run in connection with any other business, and a storekeeper running a liquor store next door should not have a doorway between. Op. Atty. Gen. (218g-13), June 3, 1935.

**Club.**  
Legislature did not intend that club must have been situated in one particular building for entire year. Op. Atty. Gen., Jan. 20, 1934.

Whether or not a golf club with club house is a "club" which may be granted a license is a question of fact. Op. Atty. Gen., Mar. 23, 1934.

A club cannot sell intoxicating liquors without a license. Op. Atty. Gen. (218j-1), Sept. 5, 1934.

Sales by clubs are not limited to members thereof. Op. Atty. Gen. (218j-1), Sept. 10, 1934.

**Wholesale dealers.**  
A commission driver who takes on a load of liquors and sells from retailer to retailer, obtaining a commission on each sale, is a wholesale dealer as are also persons accepting merchandise for consignment for resale. Op. Atty. Gen., Jan. 10, 1934.

**Person.**  
License may be issued to partnership. Op. Atty. Gen., Feb. 13, 1934.

A corporation may be owner of an exclusive liquor store. Op. Atty. Gen. (218g-13), May 22, 1934.

**Restaurant.**  
"On Sale" license cannot be issued to restaurant in village containing less than 500 population. Op. Atty. Gen., Mar. 6, 1934.

### 3200-22. Liquor control commissioner—appointment and qualifications—removal—salary—bond.—

The office of Liquor Control Commissioner is hereby established and the Liquor Control Commissioner shall be appointed by the Governor by and with the consent and advice of the Senate, whose term of office shall be four years from and after January 1 in the year in which such appointment is made. He shall be a citizen of this state and a resident thereof for not less than five years preceding his appointment and shall have no direct or indirect financial interest in the manufacture, transportation or sale of intoxicating liquor or any malt or vinous beverages, intoxicating or non-intoxicating, or commercial or industrial alcohol.

The Commissioner may be removed for cause by the Governor, after hearing thereon, and it shall be the duty of the Governor to remove him for any violation of this Act. A record of the charges, proceedings and findings thereon shall be filed in the office of the Governor of the State.

The salary of the Commissioner shall be the sum of Four Thousand Five Hundred Dollars (\$4,500.00) per year and he shall be entitled to his actual expenses in the performance of his duties.

He shall give a bond with corporate surety to the state in the sum of \$50,000.00 and the employes of such Commissioner shall give bond to the state as may be required by him. The form of all such bonds shall be prescribed by the Liquor Control Commissioner. (Act Jan. 6, 1934, Ex. Ses., c. 46, §2.)

Payment of premium on Liquor Control Commissioner's bond in excess of \$50,000 is not authorized, but state treasurer may issue liquor and beer stamps in excess of

\$50,000 to commissioner upon his requisition. Op. Atty. Gen. (218h-6), Nov. 16, 1934.

**3200-23. Office of commissioner—secretary, inspectors, clerks and assistants—removal—duties and powers—regulations—prices of liquors.—**The principal office of the Liquor Control Commissioner shall be in the City of St. Paul, Minnesota. The Commissioner may appoint a secretary and such inspectors, not to exceed 10, clerks and other assistants as he may require. All employes of the Commissioner may be removed at the will of the Commissioner. The Commissioner shall set up an adequate system for the administration of this Act, and shall have supervision over and power to regulate all forms of advertising and display of liquors. The Liquor Control Commissioner shall have power to make all reasonable regulations to effect the object of this Act, and shall have the power to fix maximum prices from time to time on all liquor sold at wholesale. Such regulations shall include provisions for assuring purity of intoxicating liquor and the true statement of its contents and the proper labeling thereof with regard to all forms of sale. (Act Jan. 6, 1934, Ex. Ses., c. 46, §3.)

Violation of a regulation of the liquor control commissioner constitutes a misdemeanor. Op. Atty. Gen. (218f), Apr. 3, 1934.

The primary duty of the commissioner under this act is to enforce regulations promulgated by him and to administer the details of issuing licenses, etc., but local officials are charged with the actual duty of enforcing the sale provisions of the act. Op. Atty. Gen. (218h-2), Aug. 23, 1934.

Commissioner could pass a regulation making it unlawful for a person to have in his possession liquor without proper tax stamps and labels and violation thereof would constitute a misdemeanor, though person in possession has it for his own personal consumption. Op. Atty. Gen. (218k), Nov. 5, 1934.

Salesman of wholesale liquor dealer taking orders for liquors without first securing an identification card as required by a regulation of liquor control commissioner is guilty of a misdemeanor. Op. Atty. Gen. (218f), Jan. 12, 1935.

### 3200-24. Printing regulations in newspaper—when regulations effective—annual publication.—

All regulations made by the Liquor Control Commissioner shall be printed in full in one issue of a legal newspaper published in the City of Saint Paul. Such regulations shall be effective five days after such publication, provided that regulations made within thirty days from the effective date of this Act shall be effective immediately upon publication. The Commissioner shall annually, and at such other intervals as he deems expedient, publish in convenient form all regulations in force, and furnish copies thereof to such persons as the Commissioner deems advisable. (Act Jan. 6, 1934, Ex. Ses., c. 46, §4.)

One cannot transport liquor as a favor to another unless he has a vehicle license as provided by regulation. Op. Atty. Gen., Mar. 5, 1934.

### 3200-25. License—fruit juices—scope and grant of licenses—carriers' licenses—off and on sale licenses—limitation of number of licenses—license fees—to whom paid—part of year.—

That it shall be unlawful for any person, directly or indirectly, upon any pretense or by any device, to manufacture, import, sell, exchange, barter, dispose of or keep for sale, any intoxicating liquor, without first having obtained a license therefor, as herein provided. Nothing herein shall prohibit the natural fermentation of fruit juices in the home for family use. All manufacturer's and wholesaler's licenses shall include the right to import and shall be granted by the Liquor Control Commissioner. The business of manufacturer and wholesaler may be combined and carried on under one license issued therefor. All licenses for retail "Off sale" shall be granted by the local governing body subject to the approval of the Liquor Control Commissioner and shall not become effective until so approved.

The Liquor Control Commissioner may issue a license or permit to any railroad company, dining car company, or sleeping car company, water transportation company or other common carrier operating in

this state, to sell intoxicating liquors referred to in this chapter upon any vessel, dining car, buffet, observation or cafe car where meals or lunches are served. Each such company applying for such license shall pay to said Liquor Control Commissioner a fee of Twenty-five Dollars per annum. A duplicate of such license shall be posted in each car and for each duplicate of such license a fee of One Dollar shall be paid. Such license so granted shall cover and permit the sale of such intoxicating liquor in the State of Minnesota, or in any political subdivision thereof, in any vessel, dining car, buffet, observation or cafe car which is a part of a train or which is about to become a part of a train then being operated or to be operated in this state. Such liquor to be sold only to bona fide passengers or persons actually being transported.

"Off sale" licenses issued by any municipality shall not be effective until approved, together with the bond, by the Liquor Control Commissioner, but no fee shall be payable to such Commissioner for such approval.

All "On sale" licenses shall be granted and the annual license fee therefor fixed by the respective local governing bodies of the various political subdivisions of the state, and such governing bodies shall have the right to revoke licenses issued by them, for cause. No "On sale" licenses shall be issued contrary to any of the provisions of this Act. Not more than one "On sale" license shall be issued in any city of the first class for every 1500 inhabitants. Not more than 200 "On sale" licenses shall be issued in any city of the first class. Not more than 15 "On sale" licenses shall be issued in any city of the second class. Not more than 10 "On sale" licenses shall be issued in any city of the third class. Not more than 5 "On sale" licenses shall be issued in any city of the fourth class, or borough. Not more than 10 "On sale" licenses shall be issued in any village of over 10,000 population. Not more than 5 "On sale" licenses shall be issued in any village of 5,000 to 10,000 population. Not more than 4 "On sale" licenses shall be issued in any village of 2,500 to 5,000 population. Not more than 3 "On sale" licenses shall be issued in any village of 500 to 2,500 population. Not more than 2 "On sale" licenses shall be issued in any village of less than 500 population. "On sale" licenses may be issued for the sale of intoxicating liquor in hotels, clubs and restaurants in cities of the first, second and third class and villages of over 10,000 inhabitants. Such licenses may be issued in cities of the fourth class, and other villages and boroughs for such sale of intoxicating liquor in hotels, clubs and/or exclusive liquor stores, which exclusive liquor stores the governing body of such municipalities may establish or permit to be established for dispensation of liquor either "On sale" or "Off sale," or both. In cities and villages having over 5,000 and not more than 10,000 population, the municipality may license "On sale" in restaurants in lieu of the establishment of exclusive liquor stores.

In cities of the first class not more than one "Off sale" license shall be granted for every 5,000 inhabitants in any such city. In such cities, such licenses shall be issued only to proprietors of drug stores, general food stores and exclusive liquor stores. In all other cities, villages and boroughs, the number of "Off sale" licenses to be issued therein shall be determined by the local governing body. In all cities, villages and boroughs other than cities of the first class "Off sale" licenses shall be issued only to proprietors of drug stores and exclusive liquor stores. Not more than one "Off sale" license shall be issued in any city, village or borough of less than 1,000 population.

The license fees to be paid before the issuance of licenses shall be as follows:

(a) Any manufacturer, as herein defined, shall pay to the state, an annual license fee in the sum of \$2500.00, except that brewers of intoxicating malt beverages shall pay to the state an annual license fee of \$500.00, and except that a manufacturer of wines containing not more than 25 per cent of alcohol by

weight shall pay to the state an annual license fee of \$250.00.

(b) Any wholesaler, as herein defined, shall pay to the state an annual license fee in the sum of \$2500.00, except that wholesalers of wine containing not more than 25 per cent of alcohol by weight and wholesalers of beer containing more than 3.2 per cent of alcohol by weight, shall pay to the state an annual license fee of \$250.00.

(c) The maximum license fee for an "Off sale" license in the cities of the first class shall be the sum of \$250.00; in all cities and villages of over 10,000 population, except cities of the first class, the maximum license fee for an "Off sale" license shall be \$200.00; in all cities and villages with a population between 5,000 and 10,000, the maximum license fee shall be \$150.00; in all cities, villages and boroughs of 5,000 population, or less, the maximum license fee shall be \$100.00. All such license fees for "Off sale" licenses shall be payable to the municipalities issuing the license. Where such licenses shall be issued for less than one year, a fee may be a pro rata share of the annual license fee. (Act. Jan. 6, 1934, Ex. Ses., c. 46, §5; Apr. 29, 1935, c. 303.)

The title and enacting parts of Act Apr. 29, 1935, cited, purports to amend "Section 5, Chapter 46, Special Laws of 1933-34."

#### In general.

No search warrants may be issued. Op. Atty. Gen., Feb. 8, 1934.

License cannot be issued in municipality which was dry at time of repeal. Op. Atty. Gen., Feb. 15, 1934.

It is permissible for anyone to transport intoxicating liquors into a dry city for personal use. Op. Atty. Gen., Feb. 26, 1934.

Customer may bring his own liquor and drink it without making owner of unlicensed restaurant liable. Op. Atty. Gen., Feb. 26, 1934.

Intra-state transportation of intoxicating liquors is not illegal. Op. Atty. Gen., Feb. 27, 1934.

Swedish Vice Consul may import liquors tax free. Op. Atty. Gen., Mar. 6, 1934.

"On Sale" liquor establishments must obtain a refreshment license from inspection department. Op. Atty. Gen. (218j-6), June 5, 1934.

#### Necessity of license.

Intoxicating beverages imported into the state should not be released by collector of customs unless persons to whom released are licensed, including importations for private use. Op. Atty. Gen., Jan. 16, 1934.

Municipality is not required to obtain license or bond. Op. Atty. Gen., Jan. 20, 1934.

A city establishing its own exclusive liquor store is not required to obtain a license nor to furnish a bond. Op. Atty. Gen., Jan. 22, 1934.

A club cannot sell intoxicating liquors without a license. Op. Atty. Gen. (218j-1), Sept. 5, 1934.

Warehouse receipts issued for whiskey stored in a bonded warehouse outside of state, sold or otherwise disposed of in state of Minnesota, are subject to provisions of the Liquor Control Act. Op. Atty. Gen. (218j-18), Sept. 21, 1934.

It is lawful for a distiller located outside state to ship intoxicating liquor in bond to a concentration bonded warehouse under control of United States without first having obtained a license. Op. Atty. Gen. (218d), Nov. 9, 1934.

Purchaser at sheriff's sale cannot resell without a license. Op. Atty. Gen. (218g-16), Apr. 29, 1935.

#### Powers of municipalities in general.

A city may prohibit consumption of intoxicating liquor in any public place. Op. Atty. Gen., Jan. 17, 1934.

Village council may establish a commission to manage village liquor store. Op. Atty. Gen., Jan. 20, 1934.

Municipalities cannot engage in sale of intoxicating liquors where licenses could not be issued to others. Op. Atty. Gen., Jan. 22, 1934.

Town boards have nothing to do with granting of liquor licenses. Op. Atty. Gen., Jan. 23, 1934.

City council itself must issue licenses and cannot delegate duty to executive commission of city. Op. Atty. Gen., Jan. 29, 1934.

Section 1266 governs in computation of population in cities for purpose of issuing intoxicating liquor licenses. Op. Atty. Gen., Jan. 30, 1934.

A city of the fourth class may establish as many municipally owned liquor stores as it sees fit. Op. Atty. Gen., Feb. 15, 1934.

Unincorporated village cannot issue licenses or operate municipal liquor store. Op. Atty. Gen., Feb. 26, 1934.

Council of village has right to appoint a manager for liquor store and to remove him at will. Op. Atty. Gen. (218j-10), Apr. 19, 1934.

Receipts from village liquor store should be turned over to village treasurer and all disbursements made by treasurer and it is improper to permit president and



clerk alone to handle funds of liquor store and merely turn surplus over to treasurer. Id.

Municipal liquor store must have refreshment license. Op. Atty. Gen. (238g), May 21, 1934.

A village establishing a municipal liquor store cannot rent part of hotel and contract with a certain person to run the store, pay all help and purchase all liquors, for a lump sum per month, and give such person 50% of profits as his compensation, since employees in the store would be village employees that must be paid as such and all expenses must be presented in regular way by verified claims to the village council, etc. Op. Atty. Gen. (218g-13), Jan. 25, 1935.

Municipality can own liquor store but not a nonintoxicating beer parlor. Op. Atty. Gen. (218g-13), Feb. 1, 1935.

Mayor of village must sign intoxicating liquor licenses. Op. Atty. Gen. (218g-11), Feb. 25, 1935.

Unincorporated hamlet or borough cannot issue licenses. Op. Atty. Gen. (218g-13), Apr. 16, 1935.

**Sale of 3.2% beer.**

If licensee is engaged in any business entitled to be licensed, except the exclusive liquor store business there is no prohibition against his selling 3.2% beer in connection with intoxicating liquors. Op. Atty. Gen., Jan. 15, 1934.

3.2% beer may not be sold under an intoxicating liquor license. Op. Atty. Gen. (217a), June 18, 1934.

**To whom licenses may be issued.**

City of the third class like Mankato can issue "On Sale" licenses only to hotels, clubs and restaurants. Op. Atty. Gen., Jan. 15, 1934.

A village of 1009 inhabitants can grant "On Sale" licenses only to hotels, clubs or exclusive liquor stores and cannot grant a license to a restaurant. Op. Atty. Gen., Jan. 20, 1934.

Councilman making application for liquor license cannot vote on the matter. Op. Atty. Gen., Jan. 23, 1934.

Restaurants and confectioneries cannot be licensed in fourth class cities. Op. Atty. Gen., Jan. 26, 1934.

City of fourth class with population between 5,000 and 10,000 inhabitants may limit "On Sale" licenses to hotels or clubs or to exclusive liquor stores or to any two of the three types but cannot give a retailer wholesale privileges. Op. Atty. Gen., Jan. 29, 1934.

In cities of fourth class "On Sale" licenses may be granted only to hotels, clubs and exclusive liquor stores, but "Off Sale" licenses may be granted to drug stores and exclusive liquor stores. Op. Atty. Gen., Jan. 29, 1934.

"Off Sale" licenses may be granted drug stores in addition to exclusive liquor licenses in cities of the fourth class unless city operates an exclusively owned liquor store. Op. Atty. Gen., Feb. 15, 1934.

A member of village council may secure a license but cannot vote on application. Op. Atty. Gen. (218g), Oct. 4, 1934.

License to sell in hotel must be issued to owner of hotel and not to lessee of space therein. Op. Atty. Gen. (218g-17), May 15, 1935.

**Limitation of number of licenses.**

Council may limit number of On and Off Sale licenses and may limit them to one. Op. Atty. Gen., Jan. 11, 1934.

All licenses must be counted whether issued to clubs, hotels, restaurants or exclusive liquor stores in determining limit of five "On Sale" licenses. Op. Atty. Gen., Jan. 22, 1934.

City of fourth class with population of approximately 1300 inhabitants may only issue five "On Sale" licenses and as many "Off Sale" licenses as it deems advisable. Op. Atty. Gen., Feb. 27, 1934.

Where a village of less than 1000 inhabitants has issued a license to an exclusive liquor store, it cannot issue another "Off Sale" license to a local drug store. Op. Atty. Gen., Mar. 3, 1934.

Village council having right to one liquor license cannot approve two or more and let commissioner select one and reject the other. Op. Atty. Gen., Mar. 19, 1934.

Licenses issued to a club should be considered with the total number of licenses issued. Op. Atty. Gen. (218g-15), Jan. 23, 1935.

City of St. Paul is entitled to 58 off sale licenses for 1935. Op. Atty. Gen. (218g-1), Feb. 16, 1935.

**On sale and off sale licenses.**

City of fourth class can issue an "On Sale" license to the proprietor of an hotel for any compact and contiguous space of the hotel building and license does not have to be limited to the dining room only, and one license may be issued to cover two dining rooms if they may as a fact be classified as one "compact and contiguous space." Op. Atty. Gen., Jan. 17, 1934.

It is permissible for a city of the fourth class to establish exclusive liquor store for both "On Sale" and "Off Sale" license, either to be operated by the city or an individual. Id.

Liquor sold in hotels need not be sold for consumption with meals. Op. Atty. Gen., Jan. 18, 1934.

Liquor store may have both "On Sale" and "Off Sale" licenses. Op. Atty. Gen., Jan. 22, 1934.

Different license fee may be required for different business granted "On Sale" licenses. Id.

Only an exclusive liquor store may be granted both an "On Sale and Off Sale" license. Op. Atty. Gen., Feb. 3, 1934.

It is not permissible for a retail liquor store with "Off Sale" license to employ a salesman to solicit orders for sale within city or county. Op. Atty. Gen., Feb. 13, 1934.

A retail liquor store with an "Off Sale" license may deliver its wares. Id.

**Manufacturers and wholesalers.**

It is not possible for a manufacturer having either a \$2500 license or a \$500 license to sell direct to the consumer. Op. Atty. Gen., Jan. 18, 1934.

A brewer under the \$500 license may sell to wholesaler and retailer, but not to the consumer, without necessity of taking out a wholesaler's license. Id.

If a wholesaler sells both wines and beers, wines containing not more than 25% alcohol and beer containing more than 3.2% alcohol, he must take out two licenses. Id.

Wholesaler's license does not include right to rectify and blend whiskey but a manufacturer's license includes wholesaling privileges. Op. Atty. Gen., Feb. 6, 1934.

A truck driver who purchases 6% beer and resells to retailers must have a wholesaler's license. Op. Atty. Gen., Feb. 26, 1934.

Liquor Control Commissioner cannot issue licenses for less than a year at a prorata license fee. Op. Atty. Gen. (218g-4), Dec. 13, 1934.

Minnesota wholesalers and manufacturers who have taken out Wisconsin wholesaler's licenses and have received stamped liquor which has arrived in this state through regular channel of manifest and has been duly stamped and then stored in Superior, cannot ship from storehouse in Superior to off sale and on sale places in the state of Minnesota. Op. Atty. Gen. (218j-16), Dec. 13, 1934.

**Exclusive liquor stores.**

Only intoxicating liquors may be sold in an exclusive liquor store. Op. Atty. Gen., Jan. 20, 1934.

If a municipality having over 5,000 and not more than 10,000 inhabitants decides to license restaurants, it cannot also permit establishment of exclusive liquor stores. Op. Atty. Gen., Jan. 20, 1934.

If exclusive liquor store is owned by city of fourth class, no licenses, either "On Sale" or "Off Sale" may be issued to private persons, but if exclusive liquor store license is granted to private party, law does not prohibit issuance of other licenses to authorized businesses. Op. Atty. Gen., Jan. 29, 1934.

A city may issue an "On Sale" license to an exclusive liquor store and limit sales to hard liquors exclusively and thus permit restaurants and other establishments to sell 3.2% beer. Op. Atty. Gen., Feb. 13, 1934.

**Hotels and restaurants.**

Hotels are not considered as preferred over an exclusive liquor store or a restaurant. Op. Atty. Gen., Feb. 14, 1934.

**License fees.**

Provision in Owatonna City Charter requiring liquor dealers to pay not less than \$500 is inconsistent with this act and is therefore ineffective. Op. Atty. Gen., Jan. 22, 1934.

Amount of license fee for "On Sale" license to exclusive liquor store in village of 3500 inhabitants must be determined by village council, only limit being that fee must not be exorbitant. Op. Atty. Gen., Jan. 26, 1934.

City may charge different license fee to dealers in beer and wines than for dealers in hard liquors. Op. Atty. Gen., Jan. 29, 1934.

A village may impose a lower license fee for sale of beer and wines than for sale of whiskey and other hard drinks. Op. Atty. Gen., Feb. 13, 1934.

**3200-26. Application for license—bond or deposit—conditions—forfeiture.**—Every person desiring a license from the Liquor Control Commissioner, shall file with him a verified written application in the form to be prescribed by the Commissioner. All applicants for manufacturer's and wholesaler's licenses to sell intoxicating liquor shall file with the Liquor Control Commissioner a bond with corporate surety, to be approved by the Liquor Control Commissioner, before granting such license, or, in lieu thereof, cash or United States Government bonds in the sum of \$10,000, according to the character of the license, made payable to the State of Minnesota. All applicants for a license to sell intoxicating liquors on any railroad train or other common carrier, shall file with the Liquor Control Commissioner a bond with corporate surety to be approved by the Liquor Control Commissioner before granting such license, or, in lieu thereof, cash or United States Government bonds in the sum of \$1,000.00. All manufacturers and wholesalers of wines containing not more than 25 per cent of alcohol by weight and manufacturers and wholesalers of beer containing more than 3.2 per cent of alcohol by weight, shall file with the Liquor Control Commissioner, a bond with corporate surety to be approved by the Liquor Control Commissioner before granting

such license, or, in lieu thereof, cash or United States Government bonds in the sum of \$5,000.00.

Every person desiring a license from a local governing body shall file with the clerk of the municipality a verified written application in the form to be prescribed by the Commissioner, with such additional information as the local governing body shall require. An applicant for an "Off sale" license shall file with the clerk of the proper municipality a bond with corporate surety, or, in lieu thereof, cash or United States Government bonds in a sum, not less than \$1,000.00 and not more than \$3,000.00, as the local governing body of such municipality shall determine, which bond shall be approved by such local governing body and the Liquor Control Commissioner.

An applicant for an "On sale" license shall file with the clerk of the proper municipality a bond with corporate surety, or, in lieu thereof, cash or United States Government bonds in a sum, not less than \$3,000.00 nor more than \$5,000.00, as the local governing body of such municipality shall determine, which bond shall be approved by such local governing body.

Bonds of manufacturers, wholesalers and common carriers shall run to the State of Minnesota. Bonds of "On sale" and "Off sale" retail dealers shall run to the municipality in which the license is issued. All such bonds shall be conditioned as follows:

As to manufacturers, wholesalers and common carriers:

(a) That the licensee will obey the law relating to such licensed business.

(b) That the licensee shall pay to the State when due all taxes, license fees, penalties and other charges payable by him under this Act, or any other law relating to the manufacture, distribution or sale of intoxicating liquor.

(c) That in the event of any violation of the provisions of law, such bond shall be forfeited to the State of Minnesota as hereinafter provided.

As to "Off sale" and "On sale" dealers:

(a) That the licensee will obey the law relating to such licensed business.

(b) That the licensee will pay to the municipality when due all taxes, license fees, penalties and other charges provided by law.

(c) That in the event of any violation of the provisions of any law relating to the retail "Off sale" and retail "On sale" of intoxicating liquor, such bond shall be forfeited to the municipality in which such license was issued.

(d) That the licensee will pay to the extent of the principal amount of such bond any damages for death or injury caused by or resulting from the violation of any provisions of law relating thereto, and in such cases recovery under this subdivision "(d)" may be had from the surety on his bond. The amount specified in such bond is declared to be a penalty, the amount recoverable to be measured by the actual damages; provided, however, that in no case shall such surety be liable for any amount in excess of the penal amount of the bond.

All such bonds shall be for the benefit of the obligee and all persons suffering damages by reason of the breach of the conditions thereof. In the event of the forfeiture of any such bond for violation of law, the District Court of the county wherein such licensed business was carried on may forfeit the penal sum of said bond or any part thereof, to the State or municipality named as obligee in such bond. (Act Jan. 6, 1934, Ex. Ses., c. 46, §6.)

Municipality is not required to obtain license or bond. Op. Atty. Gen., Jan. 20, 1934.

A city establishing its own exclusive liquor store is not required to obtain a license nor to furnish a bond. Op. Atty. Gen., Jan. 22, 1934.

Mere fact that one company writes more bonds than other companies does not prevent commissioner from approving bonds of that company. Op. Atty. Gen., Jan. 24, 1934.

Commissioner may approve bonds written by companies of which he had previously been an agent, he having entirely severed relation therewith. Id.

Action to have bond declared forfeited is to be commenced by service of summons and complaint as any other action. Op. Atty. Gen., Jan. 29, 1934.

"On Sale" licensee selling a quart of liquor to one who goes out and becomes intoxicated and then drives an automobile and injures somebody is not liable unless he has violated the law in selling the liquor. Op. Atty. Gen., Jan. 29, 1934.

Amount of bond for an "On Sale" license cannot be less than \$3,000. Op. Atty. Gen., Feb. 13, 1934.

A retail dealer under his bond guarantees payment of property taxes as well as liquor taxes but bond would not cover old taxes. Op. Atty. Gen., Feb. 15, 1934.

Certificates of deposits and cashier's checks cannot be posted as collateral. Op. Atty. Gen., Mar. 1, 1934.

New bond must be given with each renewal of license. Op. Atty. Gen. (2181), June 29, 1934.

City council is not obligated to issue licenses to any applicant, though a city entitled to issue three licenses issues two and receives application for a third, without necessary bond being deposited, may ignore the third application and grant a fourth. Op. Atty. Gen. (218g), Apr. 3, 1935.

License fee deposited with application must be refunded where no license is granted because applicant has filed no bonds. Op. Atty. Gen. (211g), Apr. 3, 1935.

(d). Municipality operating exclusive liquor store is liable for injuries. Op. Atty. Gen. (218e), July 25, 1934.

**3200-27. Revocation of licenses—financial interest in liquor retail business—monopolistic practices—new drug stores—multiple licenses to same person—dining rooms—zoning regulations—restricted areas—ineligible owners of premises—transfer of license—posting of licenses—federal permit—aliens—character—reservation of regulatory powers.**—Any license issued under the provisions of this Act may be revoked by the authority issuing such license for violation of any provisions of this Act. "Off sale" licenses may be revoked by the governing body of the municipality after hearing or revoked by the Liquor Control Commissioner after hearing. No manufacturer or wholesaler shall either directly or indirectly own or control or have any financial interest in any retail business selling intoxicating liquor, but this restriction shall not be construed to deny such person the right to use or have his property rented for such purposes in any case where the manufacturer or wholesaler was the bona fide owner of the premises prior to November 1st, 1933. No manufacturer or wholesaler shall exact or require, by contract, understanding or otherwise, any licensed retailer to handle or sell only the products of any particular manufacturer or wholesaler. No license shall be granted to any person who opens a new drug store after the passage of this Act, until such person shall have operated such store continuously for a period of two years, or shall have purchased a drug store that shall have been in continuous operation for two years. All licenses issued for any one municipality except manufacturer's and wholesaler's licenses, shall expire at the same time. No more than one retailer's license shall be directly or indirectly issued to any one person or for any one place, in each municipality. No retailer's "On sale" or retailer's "Off sale" license shall be directly or indirectly issued with respect to any place in any municipality maintaining an exclusive liquor store nor to any person or for any place for which a license of another class has been granted. No "On sale" or "Off sale" license shall be effective beyond the compact and contiguous space named therein for which the same was granted, except that an "On sale" license granted for sales in the dining room of any hotel in cities of the first and second class and villages of over 10,000 may permit sales of liquor with meals in additional dining rooms open to the public and specified in the license where meals are regularly served to guests therein. No license shall be issued for premises located within areas restricted against commercial use through zoning ordinances or other proceedings or legal processes regularly had for that purpose, except that licenses may be issued for sale in restaurants in premises which have been restricted against commercial uses since the establishment of such restaurants therein; and no license shall be issued contrary to the provisions of any charter, ordinance, or any special law re-

stricting areas within which intoxicating liquor may be sold. No license shall be issued for premises or places in which the sale or use thereof has been prohibited by Mason's Minnesota Statutes, 1927, Sections 3238-3 to 3238-21, inclusive; provided, however, that Laws 1923, Chapter 139, Section 6, the same being Mason's Minnesota Statutes, 1927, Section 10166, is hereby repealed. No license shall be issued to any person in connection with the premises of another to whom no license could be issued under the provisions of this Act, except as otherwise provided in this Act provided that this provision shall not prevent the granting of a license to a proper lessee by reason of the fact that he shall lease premises of a minor, non-citizen, or a person who has been convicted of a crime other than a violation of this Act. No more than one license shall be issued to any person in any municipality except as specifically provided in this Act. No "off sale" license shall be issued for any place where non-intoxicating malt beverages shall be sold for consumption on the premises. A license shall be non-transferable without the consent of the authority issuing the license, and shall be posted in a conspicuous place in the premises for which it is issued. No license shall be effective until a permit shall be issued to the licensee under the laws of the United States of America if such a permit be required under such laws. No license shall be issued to other than a citizen of the United States over 21 years of age who shall be of good moral character and repute nor to any person who shall be hereafter convicted of any wilful violation of any law of the United States or the State of Minnesota or of any local ordinance with regard to the manufacture, sale, distribution or possession for sale or distribution of intoxicating liquor, nor to any person whose license under this Act shall be revoked for any wilful violation of any such laws or ordinances.

The Legislature expressly reserves the right to limit or diminish the number of licenses, to limit the profits of any authorized manufacturer, wholesaler or retailer as a condition to granting or continuing a license, and to regulate, limit or prohibit the issuance or sale of capital stock in any licensee as a condition to granting a license. (Act Jan. 6, 1934, Ex. Sess., c. 46, §7; Apr. 29, 1935, c. 306.)

#### **In general.**

Village council may amend ordinance so as to extend hours of sale during life of a license. Op. Atty. Gen. (218g-11), June 27, 1934.

Person or board revoking license is not liable for any damages suffered by licensee unless power was exercised in arbitrary manner without basis in fact or evidence. Op. Atty. Gen. (218g-14), Aug. 29, 1934.

Fact that one operating an exclusive liquor store sells a restaurant under a conditional sales contract and leases building to purchaser, does not prevent purchaser from obtaining a license if the conditional sale is a bona fide transaction. Op. Atty. Gen. (218g-6), June 4, 1935.

Giving of a note to a village did not constitute payment of license fees, and license granted could be revoked at any time. Op. Atty. Gen. (218g-11), July 8, 1935.

#### **Manufacturers interested in retail business.**

Manufacturers cannot furnish equipment to retail dealers by lease or otherwise. Op. Atty. Gen., Feb. 15, 1934.

It is not lawful for a brewer to lease beer dispensing equipment to an "on" saler, but it is lawful to sell such equipment and fixtures on a time paying contract in good faith. Op. Atty. Gen., Mar. 23, 1934.

Fact that village and county voted in favor of county option prior to national prohibition has no bearing on question as to whether or not village has right to issue license for sale of intoxicating liquors. Op. Atty. Gen. (218g), Apr. 10, 1934.

#### **Several classes of licenses in same premises.**

Liquor store may have both "On Sale" and "Off Sale" licenses. Op. Atty. Gen., Jan. 22, 1934.

Grant of license to private liquor store does not prohibit issuance of licenses to other businesses. Op. Atty. Gen., Jan. 29, 1934.

Wholesaler's license is in different class from retailer's license and holder of a retailer's license cannot obtain a wholesaler's license. Op. Atty. Gen., Jan. 29, 1934.

City council may grant "On Sale" license to one holding nonintoxicating malt beverage license, latter license to be surrendered before sale of intoxicating beverages. Op. Atty. Gen., Mar. 19, 1934.

Intoxicating liquor license and nonintoxicating license may be issued to same person operating two places of

business in same building providing there is no direct communication between. Id.

Same person may be interested in sale of nonintoxicating liquor in one part of building and sale of intoxicating liquor in another part of building where there are no connecting entrances. Op. Atty. Gen., Mar. 19, 1934.

#### **Municipality maintaining exclusive liquor store.**

Section prohibits issuance of either "On Sale" or "Off Sale" license in municipalities maintaining a municipal exclusive liquor store. Op. Atty. Gen., Jan. 18, 1934.

#### **Compact and contiguous space open to public.**

If hotel dining room, restaurant and tap room occupy a compact and contiguous space a license may be granted to cover sale of liquor in all three eating places. Op. Atty. Gen., Jan. 13, 1934.

Sales may be made in any part of a hotel licensed for that purpose, subject to restriction that they be made in full view of the public. Op. Atty. Gen., Jan. 18, 1934.

Liquor sold by hotels may not be delivered to rooms. Id.

A private room in a hotel cannot be classed as an "additional dining room open to the public where meals are regularly served." Op. Atty. Gen., Jan. 29, 1934.

Restrictions against screens, chairs or tables in a place where liquor is sold are reasonable. Op. Atty. Gen. (218i), June 5, 1934.

Only one license was necessary for two dining rooms on different floors but both being on street levels, two floors being readily accessible to each other and customers being served from the same kitchen. Op. Atty. Gen. (218g-6), May 29, 1935.

#### **Prohibition areas.**

A village which voted against licensing at last local option election under act of 1913 may not issue licenses without vote of electors. Op. Atty. Gen., Jan. 18, 1934.

Fact that county voted dry under county option law of 1915 does not govern with respect to power of municipality to issue license. Op. Atty. Gen., Jan. 20, 1934.

No licenses may be granted by municipality which voted dry before prohibition. Op. Atty. Gen., Jan. 20, 1934.

No licenses can be legally issued in a village dry at time of prohibition. Op. Atty. Gen., Jan. 20, 1934.

This section refers in no manner to vote taken at Sept. 12, 1933, election upon question of repeal of Eighteenth Amendment. Op. Atty. Gen., Jan. 20, 1934.

Municipalities voting against licensing at last election before prohibition cannot issue licenses without vote of electors. Op. Atty. Gen., Jan. 22, 1934.

Fact that county option laws are of no effect does not prevent enforcement of act in counties voting against licenses under repealed acts. Op. Atty. Gen., Jan. 24, 1934.

City voting dry in 1915 may not issue licenses without holding an election. Op. Atty. Gen., Feb. 7, 1934.

Local option election was valid even though clerk did not file certificate of result. Op. Atty. Gen., Feb. 7, 1934.

County option vote under 1915 law is not to be considered in determining whether or not municipality can grant licenses. Op. Atty. Gen., Feb. 8, 1934.

Local option vote in 1915 rather than county option vote before prohibition controls question whether municipality can license. Op. Atty. Gen., Feb. 9, 1934.

License cannot be issued in municipality which was dry at time of repeal. Op. Atty. Gen., Feb. 15, 1934.

County option vote in 1915 is not controlling on question whether or not licenses may be issued by village. Op. Atty. Gen., Feb. 19, 1934.

Wholesalers' licenses cannot be issued for premises outside patrol limits in Minneapolis. Op. Atty. Gen., Feb. 20, 1934.

Village which voted dry in 1913 could not issue liquor license without an election. Op. Atty. Gen., Feb. 20, 1934.

Local option vote was of no effect in Indian territory. Op. Atty. Gen., Mar. 8, 1934.

Local option vote of township is not binding on subsequently organized village. Op. Atty. Gen., Mar. 19, 1934.

Vote on repeal of Eighteenth Amendment has no bearing on right of municipality to grant intoxicating liquor licenses. Id.

Dry vote in village of North Mankato was without effect upon right of city of North Mankato to issue liquor licenses. Op. Atty. Gen., Mar. 19, 1934.

Distance of liquor store from school house is a matter of municipal regulation. Op. Atty. Gen. (218g-11), Apr. 30, 1934.

Villages, cities and townships, have no right to prohibit sale of liquor under the old local option liquor law. Op. Atty. Gen. (218j), May 28, 1934.

Ordinance passed by city in 1921 prohibiting sale of liquor is not now in force and abatement provisions. Op. Atty. Gen. (259c-1), June 12, 1934.

Village detached from Indian country may license sale of liquor if in a wet county, regardless of any dry local option vote while village was in Indian country. Op. Atty. Gen. (218g-11), Dec. 12, 1934.

#### **Qualifications of licensee.**

A liquor license may be issued to a person that holds brewery stock. Op. Atty. Gen., Feb. 3, 1934.

Section prohibits issuance of license only to those convicted of crimes after its passage, though past crimes are pertinent to good moral character and repute. 1d.

It is permissible to grant a license to one intending to use a building that was padlocked for violation of Eighteenth Amendment. 1d.

Parties convicted of violation of prohibition prior to passage of this act may be granted license if they are of good moral character. Op. Atty. Gen., Feb. 3, 1934.

A non-citizen may not be issued a license. Op. Atty. Gen., Mar. 3, 1934.

A corporation may be owner of an exclusive liquor store. Op. Atty. Gen. (218g-13), May 22, 1934.

A license is not a contract and an alderman of a city may receive a license to sell intoxicating liquors, except that he cannot vote on his own application. Op. Atty. Gen. (218g), Feb. 15, 1935.

Off sale license cannot be issued for drugstore operating for less than two years though drugstore had been operated in the location for many years by a different person. Op. Atty. Gen. (218g-5), May 6, 1935.

**3200-28. Regulation of sales—prohibited times, places, and persons—orderly conduct—gambling devices—prostitutes—employment of minors—pool and billiard tables.**—No sale of intoxicating liquor shall be made on Sunday nor before 3 o'clock P. M. on any Memorial Day nor before 8 o'clock P. M. on any Election Day in the district in which such election shall be held. No "On sale" shall be made before 8 o'clock A. M., or after 12 o'clock midnight of any day. No "Off sale" shall be made before 8 o'clock A. M. or after 8 o'clock P. M. of any day except Saturday, on which day "Off sales" may be made until 10 o'clock P. M. No "On sale" place shall be permitted to have swinging doors or opaque windows. All sales shall be made in plain view of the public. No intoxicating liquor shall be sold or furnished for any purpose whatever to any person under the age of 21 years, or to an habitual drunkard or to any person obviously intoxicated or to any of the persons to whom sale is prohibited by statute or by reason of sale to whom a penalty is provided by statute. No intoxicating liquors shall be sold within the Capitol or upon the grounds thereof, or upon the State Fair Grounds or in any place where such sales shall be prohibited by law or by the ordinance of any city, village or borough. Every licensee shall be responsible for the conduct of his place of business and for conditions of sobriety and order therein. No licensee shall keep, possess or operate, or permit the keeping, possession or operation of, on the licensed premises, or in any room adjoining the licensed premises, any slot machine, dice or any gambling device or apparatus, nor permit any gambling therein, or permit the licensed premises or any room in the same or in any adjoining building, directly or indirectly under its control, to be used as a resort for prostitutes or other disorderly persons. No person under 21 years of age shall be employed in any rooms constituting the place in which intoxicating liquors are sold at retail "On sale." No pool table or billiard table shall be kept or used in any "On sale" premises except a club as defined in this Act. (Act Jan. 6, 1934, Ex. Ses., c. 46, §8.)

Under an ordinance defining intoxicating liquor as any beverage with an alcoholic content of more than 3.2 per cent. by weight or 4 per cent. by volume, conviction for selling intoxicating liquor is not sustained by evidence merely that "beer" was being consumed. City of St. Paul v. K., 194M386, 260NW357. See Dun. Dig. 4944.

Village as soon as removed from Indian country may issue licenses without an election. Op. Atty. Gen. (218g-11), Dec. 14, 1934.

**Prohibited times.**

When township election in township of Waterville is held within limits of city of Waterville, no intoxicating liquors may be sold on that day, notwithstanding townships are separate governmental units and residents of cities do not participate in election. Op. Atty. Gen., Mar. 9, 1934.

If village voted dry under old local option law, village would not be dry until such time as voters at an annual village election authorize issuance of license to sell intoxicating liquors, but a vote upon a county option law would have no bearing on question as to whether village

could issue license, except in those counties that voted for delegates against repeal at special election on Sept. 12, 1933. Op. Atty. Gen. (218g-5), Feb. 25, 1935.

**Sales to be open to public view.**

Whether booths are sufficiently exposed to public view is question of fact. Op. Atty. Gen., Jan. 11, 1934.

Sales of intoxicating liquors cannot be made in private rooms of a hotel. Op. Atty. Gen., Jan. 13, 1934.

Provision that all sales shall be made in full view of the public does not mean in full view of the public from outside the building but in full view of the public in the place of the business. Op. Atty. Gen., Jan. 15, 1934.

A private room in a hotel cannot be classed as an "additional dining room open to the public where meals are regularly served." Op. Atty. Gen., Jan. 29, 1934.

Sales may be made in booths in full view of people on the inside of an on-sale establishment. Op. Atty. Gen. (218j), Feb. 15, 1935.

**Gambling on premises.**

Card tables may be allowed on premises, providing there is no gambling. Op. Atty. Gen., Feb. 13, 1934.

**3200-29. Commissioner to assist public education respecting effects of alcohol—regulating advertising.**—

The Liquor Control Commissioner shall assist the State Department of Education, immediately upon the enactment of this Act, to prepare a course of instruction relating to the effects of alcohol upon the human system, upon character and upon society. Such course of instructions shall be used in all public schools of the state. The unrestricted advertising of intoxicating liquor is hereby declared to be contrary to public policy. Reasonable rules and regulations restricting advertising to prevent it from counteracting temperance education shall be made by the Liquor Control Commissioner. (Act Jan. 6, 1934, Ex. Ses., c. 46, §9.)

**3200-30. Licenses not to issue in places voting against repeal of eighteenth amendment—local regulations.**

—Until such question shall have been otherwise determined by the electors, no license shall be issued in respect to any place in any county in which the majority of the electors voting at the September 12th, 1933, election provided for by Chapter 214, Laws 1933, voted for delegates "against repeal." Any local authority shall have power to impose further restrictions and regulations upon the sale and possession of intoxicating liquor within its limits. (Act Jan. 6, 1934, Ex. Ses., c. 46, §10.)

Subject to §3200-27 municipalities are authorized to issue licenses for sale of intoxicating liquors in all counties voting for repeal of Eighteenth Amendment. Op. Atty. Gen., Jan. 20, 1934.

Fact that county option laws are of no effect does not prevent enforcement of act in counties voting against licenses under repeal acts. Op. Atty. Gen., Jan. 24, 1934.

Section has no application to a municipality voting either for or against repeal of Eighteenth Amendment. Op. Atty. Gen., Jan. 26, 1934.

A resident of a dry county may legally purchase intoxicating liquor in a wet county and bring it back with him to dry county for his own personal use. Op. Atty. Gen., Jan. 29, 1934.

County option vote under 1915 law does not determine whether county is wet or dry. Op. Atty. Gen., Feb. 15, 1934.

A village or city may pass an ordinance providing for issuance of a search warrant and also providing for abatement of premises for violating ordinance. Op. Atty. Gen. (218f-3), Apr. 10, 1934.

Local option vote was of no effect in the Indian country. Op. Atty. Gen. (218j-9), Oct. 20, 1934.

Municipalities in dry counties cannot vote on question of licensing until after May 1, 1935, and any elections held before that date are of no effect. Op. Atty. Gen. (218c-1), Dec. 10, 1934.

If village voted dry under old local option law, village would now be dry until such time as voters at an annual village election authorize issuance of license to sell intoxicating liquors, but a vote upon a county option law would have no bearing on question as to whether village could issue license, except in those counties that voted for delegates against repeal at special election on Sept. 12, 1933. Op. Atty. Gen. (218g-5), Feb. 25, 1935.

Illegal sales and possession for sale constitutes criminal offense in dry counties, but transportation by a person holding a proper license is not an offense. Op. Atty. Gen. (218f), June 24, 1935.

Liquor bearing proper tax stamp cannot be destroyed after being used as evidence in prosecution in dry county. 1d.



**3200-31. Sacramental wine—license of sale.**—The provisions of this Act shall not be deemed to prohibit the importation and introduction into the state or purchase within the state by any regularly appointed and ordained rabbi, priest, minister or pastor of any church or established religious organization of wine for sacramental purposes, and provided further, that any person may be licensed to import, purchase and to sell wine to be used exclusively for sacramental purposes, but upon condition that such wine shall be sold only to a rabbi, priest, minister or pastor of a duly organized church or established religious organization upon the written certificate of such rabbi, priest, minister, or pastor that the amount so sold to him is reasonably required for sacramental purposes in religious exercises and will be used only for those purposes. Such purchasers may supply the wine so purchased to individual worshippers of religious organizations and congregations who practice religious rites and ceremonies in their homes in which wine is used by virtue of the established tenets of such organizations.

Licenses for such purposes shall be issued by the Liquor Control Commissioner upon payment of a license fee of \$10.00 per annum and the giving of a penal bond in the sum of \$1,000.00 conditioned for compliance with this section. (Act Jan. 6, 1934, Ex. Ses., c. 46, §11.)

**3200-32. Sale for medicinal, mechanical, and scientific purposes—license.**—The provisions of this Act shall not apply to medicines as defined herein nor to industrial alcohol designed for mechanical, chemical, scientific, pharmaceutical or industrial purposes, nor to compounds or preparations containing alcohol, if such compounds or preparations are not potable as a beverage.

It shall be lawful for any duly licensed and registered pharmacist or druggist within this state to make sales of intoxicating liquor for medicinal purposes upon bona fide prescriptions by a physician or dentist, in writing, without having obtained an "Off sale" license. (Act Jan. 6, 1934, Ex. Ses., c. 46, §12.)

Druggists have right to sell intoxicating liquors for medicinal purposes without a license upon prescription. Op. Atty. Gen., Jan. 11, 1934.

Each sale by druggist on prescription requires new prescription. Op. Atty. Gen., Jan. 11, 1934.

Consignments of liquors to druggists in a dry city may be transported to the druggists therein without stamps or labels thereon. Op. Atty. Gen., Feb. 26, 1934.

Veterinarians may write prescriptions for intoxicating liquors. Op. Atty. Gen., Mar. 3, 1934.

**3200-33. Removal of officers who fail to perform duty—revocation of licenses and forfeiture of bonds—violations of act—duties of commissioner.**—(a) The failure on the part of any duly constituted public officer, charged by law with the enforcement of this Act, shall constitute nonfeasance in office and shall be valid ground for the removal of such officer.

(b) When any licensee shall wilfully violate the provisions of this Act, his license shall be immediately revoked and his bond forfeited, and no license of any class shall for a term of five years thereafter be issued to the same person or to any person who at the time of the violation owns any interest, whether as holder of more than 5 per cent of the capital stock of a corporation licensee, as partner, or otherwise, in the premises or in the business conducted thereon, or to any corporation, partnership, association, enterprise, business or firm in which any such person is in any manner interested.

(c) Whoever in violation of the provisions of this Act shall manufacture intoxicating liquor for the purposes of sale shall be guilty of a gross misdemeanor.

(d) Whoever in violation of the provisions of this Act shall transport or import into the state liquor for the purposes of sale shall be guilty of a gross misdemeanor.

(e) Whoever shall violate any provisions of this Act as to sale, licensing, or any of the regulatory provisions pertaining thereto as herein provided for shall be guilty of a misdemeanor.

The Liquor Control Commissioner shall have the power to institute proceedings to cancel or revoke the licensing of any pharmacist or druggist as such pharmacist or druggist who shall violate the provisions of this Act. (Act Jan. 6, 1934, Ex. Ses., c. 46, §13.)

Intrastate transportation of intoxicating liquors is not illegal. Op. Atty. Gen., Feb. 27, 1934.

Commissioner could pass a regulation making it unlawful for a person to have in his possession liquor without proper tax stamps and labels and violation thereof would constitute a misdemeanor, though person in possession has it for his own personal consumption. Op. Atty. Gen. (218k), Nov. 5, 1934.

(a) Whether illegal sale of liquor by mayor of a city involves a violation of his official oath depends on the nature of his oath and the place of the sale. Op. Atty. Gen. (61f), Aug. 21, 1934.

(e) Violation of a regulation of the liquor control commissioner constitutes a misdemeanor. Op. Atty. Gen. (218f), Apr. 3, 1934.

Unlawful sale of intoxicating liquor constitutes a misdemeanor. Op. Atty. Gen. (218f-3), Apr. 18, 1934.

Tax paid liquors cannot be confiscated on conviction for selling without license. Op. Atty. Gen. (218f-1), Sept. 15, 1934.

Salesman of wholesale liquor dealer taking orders for liquors without first securing an identification card as required by a regulation of liquor control commissioner is guilty of a misdemeanor. Op. Atty. Gen. (218f), Jan. 12, 1935.

Attorney general may not render an opinion concerning private civil liability. Op. Atty. Gen. (218g-13), Feb. 7, 1935.

**3200-34. Appropriation.**—There is hereby appropriated the sum of \$25,000 out of any monies not heretofore appropriated for carrying out the purposes of this Act. (Act Jan. 6, 1934, Ex. Ses., c. 46, §14.)

Liquor control commission has power to expend money from sale of tax stamps to administer various acts but cannot use revenue obtained by issuance of licenses, permits and sale of labels. Op. Atty. Gen., Feb. 20, 1934.

**3200-35. Local option elections in villages.**—The village recorder of any village of this state shall, upon the petition of ten legal voters of such village, filed with him at least fifteen days before the annual village election thereof, give notice at the same time and in the same manner as the notice of such election that the question of granting license in such village for the sale of intoxicating liquor will be submitted for determination at each election. At such election, when so petitioned for, said question shall be voted upon by a separate ballot the terms of which shall be either "for license" or "against license," which ballots shall be deposited in a separate ballot box to be provided in each voting precinct and the result of such voting shall be duly canvassed, certified and returned in the same manner and at the same time as the other facts and returns of said election. (Act. Jan. 6, 1934, Ex. Ses., c. 46, §15.)

Section refers only to the annual election. Op. Atty. Gen., Jan. 18, 1934.

Municipality may pass an ordinance contingent on voters voting in favor of license. Op. Atty. Gen., Feb. 15, 1934.

Sections 3200-35 and 3200-36 apply to villages that are now prohibited from selling liquor under the old local option law and also those villages whose licenses are now granted under authority of law but where a petition calling for a vote against licensing is presented by a proper number of voters. Op. Atty. Gen. (218e), Nov. 20, 1934.

Question presented on petition cannot be limited to authorization of licenses of off-sales only. Id.

Municipalities in dry counties cannot vote on question of licensing until after May 1, 1935, and any elections held before that date are of no effect. Op. Atty. Gen. (218c-1), Dec. 10, 1934.

Village detached from Indian country may license sale of liquor if in a wet county, regardless of any dry local option vote while village was in Indian country. Op. Atty. Gen. (218g-11), Dec. 12, 1934.

A special election cannot be held to vote on question of licensing sale of intoxicating liquors. Op. Atty. Gen. (218g-11), Dec. 14, 1934.

Election on question of licensing sale of intoxicating liquor was invalid where no petition was signed by voters, wording on ballot was incorrect and separate ballot and ballot boxes were not provided. Id.

Village as soon as removed from Indian country may issue licenses without an election. Id.

Special election cannot be called on question of issuing licenses. Op. Atty. Gen. (339g-1), Apr. 29, 1935.

**3200-36. Same—result of election.**—If a majority of all the ballots cast upon such question at such election shall be "for license" the village council of said village may grant license for the sale of intoxicating liquors for the ensuing license year, but if such majority shall be "against license" then no such license shall be granted and such vote shall remain in force until reversed at a subsequent annual election at which the said question of license is again in like manner submitted. (Act Jan. 6, 1934, Ex. Ses., c. 46, §16.)

If vote is against licensing, council may not continue licenses already issued to end of their license term. Op. Atty. Gen. (218e), Nov. 20, 1934.

If voters authorize continuance of licensing, council may in its discretion refuse to grant any license. Id.

**3200-37. Local option election in fourth class cities on petition of voters—notice.**—The clerk or recorder of any city of the fourth class, whether the same is incorporated under a special law or the general laws or under a home rule charter, on petition of ten per cent, and in no case less than twenty-five of the legal voters, such percentage to be determined by the number of votes cast at the last city election, filed with him at least twenty days before the regular city election, shall give notice at the same time and in the same manner as the notice of such city election that the question of granting license in such city for the sale of intoxicating liquor will be submitted for determination at such election. (Act Jan. 6, 1934, Ex. Ses., c. 46, §17.)

Petition for election need not be verified. Op. Atty. Gen., Feb. 20, 1934.

Form of petition. Op. Atty. Gen. (218c-1), Mar. 6, 1935.

**3200-38. Same—ballots—marking and casting—cavass—result—manufacture—prescriptions.**—At such election, when so petitioned for, said question shall be voted on by separate ballot provided by the city clerk or city recorder, which ballot shall be known as "license ballot." The said ballot shall have printed thereon the words "for license" and "against license," and each qualified elector voting upon said question, shall place a cross mark (x) in the place opposite the words "for license" or in the place opposite the words "against license," which ballot shall be deposited in a separate ballot box to be provided for in each voting precinct, and such votes shall be counted for or against said question in accordance with the expressed will of the elector, as provided by the election laws of this state. The ballots so cast shall be duly canvassed, returned and certified, according to the law governing such city elections and if a majority of the votes cast upon the question shall be in favor of license then license for the sale of intoxicating liquor may be granted, but if such majority shall be against license then no license shall be granted and no liquor shall be sold in any quantity whatever, either wholesale or retail, in any such city, until such vote shall be reversed at a subsequent election at which the question of license is again in like manner submitted; provided that intoxicating liquor manufactured therein may be sold to be consumed outside of said city; and provided further that any duly licensed and practicing physician, dentist or veterinarian may prescribe or any duly licensed druggist or pharmacist actually carrying on business as such may in good faith as such druggist or pharmacist dispense, intoxicating liquor under the conditions and restrictions and subject to the penalties prescribed by law. (Act Jan. 6, 1934, Ex. Ses., c. 46, §18.)

Electors of a city may vote on question of issuing licenses, but city council is to determine whether or not city shall establish a municipal liquor store or whether licenses shall be issued to private persons. Op. Atty. Gen. (218c-1), Feb. 7, 1935.

Form of ballot. Op. Atty. Gen. (218c-1), Mar. 6, 1935.

**3200-39. Same—charter and ordinance provisions continued—suspension.**—All charter provisions and ordinances of any such city authorizing or providing for a vote by the electors on the question of either license for or the prohibition of the sale of intoxicating liquor therein, or prohibiting such sale or the

granting of license therefor in consequence of any such vote had on said questions shall continue and remain in full force and effect until an election shall have been held and determined under the provisions of this Act in any such city; and all such provisions, ordinances and prohibitions shall be and remain suspended after said election shall have been held and determined for so long a time as this Act remains in force, and no longer, except that the provisions of this Act as to petitions for, procedure in, and conduct of elections shall take effect immediately. (Act Jan. 6, 1934, Ex. Ses., c. 46, §19.)

Village which voted dry in 1913 could not issue liquor license without an election. Op. Atty. Gen., Feb. 20, 1934.

**3200-40. Local option elections in counties—effective date—petition—verification.**—Sections numbered 20 to 36, inclusive [§§3200-40 to 3200-56], of this act, shall not apply to any county in the state in which is located any city of the first class. The provisions of sections numbered 20 to 36, inclusive, shall not take effect or be in force until May 1, 1935. Whenever there shall be presented to the county auditor of any county within this state a petition signed by any number of the qualified voters thereof equal to or exceeding twenty-five (25) per cent of the total number of votes cast therein for governor at the last preceding general election, praying that a special election be held in said county to determine whether the sale of intoxicating liquors shall be prohibited therein, said auditor shall forthwith file such petition in his office, and thereafter keep and retain the same as a part of the records and files thereof, and said petition so presented and filed shall be prima facie evidence of the facts therein stated. Every such petition shall be substantially in the form hereinafter provided, and every such petitioner shall, opposite his signature thereto, specify his residence, giving the street and number, if any, and no voter shall sign his name to or withdraw his name from any such petition after the same has been so presented to the county auditor. Said petition shall also contain a written or printed oath to the effect that the petitioner is a legal voter of said county and knows the contents and purpose of said petition and signed the name of his own free will, and each petitioner shall at the time of signing be sworn as aforesaid. No signature shall be valid unless the date of the verification of the signer is less than ninety (90) days before the date of its presentation to the county auditor. Said petition when so presented may consist of separate petitions fastened together as one document, and containing in the aggregate the number of voters hereinbefore specified. (Act Jan. 6, 1934, Ex. Ses., c. 46, §20.)

Sections 3200-40 to 3200-56 have application to county option elections only. Op. Atty. Gen., Feb. 20, 1934.

Each voter signing petition is required to swear or affirm to form of oath prescribed by statute but a single petition consisting of several sheets may be certified by notary or other officer at the end of the last sheet. Op. Atty. Gen. (218c-2), June 6, 1935.

Petition must be circulated by a person authorized by law to take acknowledgments. Op. Atty. Gen. (218c-2), July 30, 1935.

**3200-41. Same—special election—time.**—The auditor shall upon the filing of said petition in his said office, forthwith make and file therein an order bearing his signature and his official seal directing the submission to the voters of said county of the question whether the sale of intoxicating liquor shall be prohibited therein, at a special election for such purpose, to be held on a Monday occurring not less than forty (40) days nor more than fifty (50) days after such filing of said petition; provided, however, that if said petition is presented to the auditor within sixty (60) days prior to any primary or general election in said county or any regular town or village election therein, then, and in such event, the election to be held hereunder upon the presentation of such petition shall be fixed for a Monday not less than thirty (30) days nor more than forty (40) days subsequent to said primary, general, or regular town or village

election; provided that said election shall not be held on the same day as any other regular municipal election; and provided that the time during which the holding of such election may be postponed by any obstacle shall not be a part of the time within which the election is hereby required to be held and provided further that no election in any such county under the provisions of this Act shall be ordered or held within three (3) years subsequent to a previous election hereunder in such county, unless such previous election shall have been set aside or adjudged invalid. (Act Jan. 6, 1934, Ex. Ses., c. 46, §21.)

**3200-42. Same—notice.**—Said auditor shall immediately upon such filing of said petition and affidavits and his said order, make and file in his office a notice of such election, bearing his signature and official seal, and thereupon and at least twenty-five (25) days prior to the time fixed for the holding of said election serve a duplicate copy of said notice personally or by registered mail upon the clerk or recorder of each village, city or town within said county, and shall forthwith make and file in his office an affidavit showing the time and manner of such service, whereupon, each clerk or recorder shall at least fifteen (15) days before said election, cause to be posted in three conspicuous places, in each election district of his city, village, or town, a notice of said election, and one copy of each notice so posted together with proof of such posting thereof by affidavit of the person posting the same shall be forthwith filed by each said clerk and recorder in his respective office. Failure for any cause to give any of the notices herein required or to make or file proof thereof shall not be held to invalidate any election held hereunder. (Act Jan. 6, 1924, Ex. Ses., c. 46, §22.)

**3200-43. Same—judges of election—clerks.**—The members of the town board shall be judges of such election in the election district in which they respectively reside unless all are of like belief, either in favor of prohibiting the sale of intoxicating liquors in said county or against the prohibition thereof in which case not more than two, determined by lot unless otherwise agreed upon, shall act as judges. But no member of such board shall be compelled to serve as judge, and if any decline they shall notify the town board in time to fill the place by appointment.

The council of every municipality at least ten (10) days before such election, shall appoint to be judges thereof three (3) qualified voters of each district therein, at least one (1) of whom shall be known to be in favor of prohibiting the sale of intoxicating liquors in said county, and one (1) shall be known to be against prohibiting such sale. But in villages having but one (1) district and not included in any town district, the members of the council shall be judges, subject to the qualifications and restrictions provided for town boards in like cases.

The judges of each district shall appoint two (2) qualified voters therein as clerks except that in towns, the town clerk, and in villages having but one (1) district and not included in any town district, the village clerk or recorder shall serve as one (1) of the clerks in the district where he resides. No more than two (2) judges and one (1) clerk, in any district shall be of like belief, either in favor of prohibiting the sale of intoxicating liquors in said county or against prohibiting such sale, and no person shall be eligible as judge or clerk unless he can read, write and speak the English language understandingly. And no additional judge or clerks to be known as ballot judge or clerks shall be appointed. Whenever for any reason it becomes necessary to appoint one or more judges in order to provide three judges for each election district, the town board or council shall at least five (5) days before the time fixed for the holding of said election appoint the number required. Vacancies in the office of judge or clerk by reason

of failure to appear at the time and place of said election or otherwise shall be filled as provided by law for general elections in this state, subject to the qualifications and restrictions hereinbefore prescribed. (Act. Jan. 6, 1934, Ex. Ses., c. 46, §23.)

**3200-44. Same—Challenge of voters.**—The judges shall allow one (1) voter, known to be in favor of prohibiting the sale of intoxicating liquors in such county and one (1) known to be against prohibiting such sale, to be in the room where the election is held, to act as challengers of voters. Such challengers shall be subject to the provisions of law relating to challengers in case of general elections. (Act Jan. 6, 1934, Ex. Ses., c. 46, §24.)

**3200-45. Same—ballots.**—The ballots for said election shall be printed in the following form, words and characters: Shall the sale of liquor be prohibited?

Yes	
No	

The voter shall mark a cross in one (1) of the above squares to express his choice. Such ballot shall take the place of the official ballot required for general elections and, together with a sufficient number of blank forms for lists and affidavits, and such other blanks as are required in preparing for and conducting such election, shall be prepared under the direction of the county auditor and with such forms and blanks by him delivered to the proper clerks or boards in sufficient quantities and in time to enable them to comply with the provisions of this Act, all as provided by law in case of general elections for county officers. (Act Jan. 6, 1934, Ex. Ses., c. 46, §25.)

**3200-46. Same—laws applicable—oath to voters.**—In all elections hereunder, except as to matters herein otherwise provided for, all provisions of law governing general elections for county officers in this state, including penal provisions and provisions relating to compensation of officials, and to payment of expenses incurred in preparing for and conducting elections, shall apply and govern as far as applicable. Provided that the compensation of the members of the county canvassing board shall be the same as the compensation of the members of the county canvassing board provided for by said election laws. The ballots shall be given to electors, marked, cast, counted, canvassed, returned and preserved, and returns made and delivered to the auditor, all substantially in accordance with the law governing general elections for county officers. It shall not be necessary to make new election districts or to make any new register of voters for any election held pursuant to this Act prior thereto, but the judges of such election in each district shall take from the custodian thereof and use at such election the register of voters used in said district at the general election next preceding said election so as to be held as herein provided. If any person shall offer to vote in any such districts whose name does not appear on such registration list, his name shall be entered thereon upon his taking such oath, answering such questions, and complying with such other provisions as shall be required by the then existing laws regulating the registration of voters. After his name is so entered and before he receives the ballot, the judges shall administer the following oath:

“You do swear that you are a citizen of the United States; that you are twenty-one years of age, and have been a resident of this state for six months immediately preceding this election; that you are a qualified voter in this district; and that you have not voted at this election.”

Upon taking this oath if the judges are satisfied he is a qualified voter, he shall be allowed to vote. If



such person refuses to take this oath, he shall not be allowed to vote and his name shall be removed from the register. (Act Jan. 6, 1934, Ex. Ses., c. 46, §26.)

**3200-47. Same—county canvassing board—canvass and certification of result.**—The auditor, the chairman of the county board, and two qualified electors of the county, appointed by the auditor, one (1) known to be in favor of prohibiting the sale of intoxicating liquors, in said county, and one (1) known to be against prohibiting such sale, shall constitute the county canvassing board, any three of whom at least one being known to be in favor of prohibiting and one being known to be against prohibiting such sale, being present and sworn shall have the power to act; and it shall be the duty of the auditor to appoint electors willing to act on said canvassing board as soon as practicable and within five (5) days after the day of said election. Such board, as soon as practicable and within ten (10) days after said election, shall meet at the auditor's office and there publicly canvass the returns made to said auditor. Such canvass shall, forthwith and within fifteen (15) days after said election, be completed and thereupon said board shall certify in writing the result of said canvass, and forthwith file their certificate thereof, duly signed by the members of the board so acting, with the county auditor of said county. (Act Jan. 6, 1934, Ex. Ses., c. 46, §27.)

**3200-48. Same—contest of election—mandamus.**—Any voter may contest the validity of such election, as provided by Sections 488, 489 and 490 of Mason's Minnesota Statutes for 1927, provided that it shall be the duty of the county attorney of such county to appear in defense of the validity of such election in any such contest in his county; and provided further that any voter of said county may appear at any time before trial and defend as contestee therein by serving written notice of his appearance signed by himself or his attorney on the contestant or his attorney, as provided by law, for the service of answers in civil actions. A writ of mandamus shall issue on information of any legal voter of said county to compel the performance of any duty enjoined upon any officer by this Act, and all the provisions of Chapter 87, of Mason's Minnesota Statutes for 1927 relating to mandamus proceedings hereunder shall apply to any proceedings hereunder as far as the same may be applicable. (Act Jan. 6, 1934, Ex. Ses., c. 46, §28.)

**3200-49. Same—result of election and effect thereof—accrued offenses.**—If a majority of the votes at any such election be cast in favor of prohibiting the sale of intoxicating liquors then, and in that event, and not otherwise, from and after the time of the filing of the certificate of the county canvassing board, as herein prescribed, the operation and enforcement of every statute and of every municipal charter now existing or hereafter enacted or adopted, so far as the same shall make the granting of licenses for the sale of intoxicating liquors or the sale or other disposition thereof, optional with the voters of towns, villages or cities, or any thereof, or in any manner authorize or relate to the granting or issuance of any such license shall become and be wholly suspended in said county, and in each town, village and city therein, and the selling or storing or having in possession for sale or soliciting, receiving or taking any orders for, intoxicating liquors in any quantity whatsoever, and the keeping of any place, structure or vehicle, transient or permanent, where such liquor shall be sold or stored or kept for sale, in any quantity whatever, in any place in such county, shall be illegal and prohibited, except as hereinafter otherwise expressly provided and except further than licensees may sell intoxicating liquors until such time as their licenses shall be annulled under the provisions of this Act. And six (6) months from and after the time of the filing of the certificate of the county canvassing board, as herein prescribed, the operation and enforcement

within said county, and in each said town, village and city therein, of every statute, municipal charter and ordinance, now existing or hereafter enacted or adopted, so far as the same shall relate to the sale of intoxicating liquor by licensees or the conduct or regulation of licensed public drinking places shall likewise become and be suspended. Each such suspension of the operation and enforcement of every such statute, charter and ordinance, and such prohibition shall continue until another election hereunder shall be held in said county, at which the majority of the votes cast shall be against prohibiting the sale of intoxicating liquors therein, whereupon such suspension and such prohibition shall cease, and all of the then existing statutes, municipal charters and ordinances be thereafter operative and enforceable within said county until the operation there shall be again suspended and such prohibition again put in force, under and pursuant to the terms of this Act; provided, however, that no suspension of the operation or enforcement of any statute, charter or ordinance under this Act shall in any manner prevent or affect the prosecution or enforcement of any offense committed or any penalty incurred at a time prior to such suspension or when same was not in force. (Act Jan. 6, 1934, Ex. Ses., c. 46, §29.)

**3200-50. Same—Licenses withheld and suspended—refund.**—During the period of such prohibition and the suspension of the statutes and municipal charters first mentioned in the last preceding section, it shall be unlawful for any licensing board or council within said county to grant any license for the sale of intoxicating liquors therein. Every such license attempted to be granted in said county during such period of suspension or prohibition shall be null and void. And all licenses for the sale of intoxicating liquors granted in said county after the passage of this Act for a term which shall not have expired, shall six (6) months from and after such suspension of the statutes or charter pursuant to which the same was granted forthwith be annulled and the holder thereof be liable for the sale of any liquor made by him thereafter the same as though no license had ever been issued to him. The county or municipality issuing such license shall refund to the holder thereof the portion of the fees received and retained by it for such license corresponding to the unexpired term thereof, which shall thereupon be charged in its due proportion to the fund or funds to which it shall have previously been credited, appropriated or applied. (Act Jan. 6, 1934, Ex. Ses., c. 46, §30.)

**3200-51. Same—offenses in prohibition territory—unexpired licenses—liquor manufactured and stored—prescriptions by physicians—other offenses.**—(a) Every person, company, corporation, club, association or society, directly or indirectly, either personally or by clerk, agent or employee, who shall sell or store or have in possession for sale, or shall solicit, receive or take any orders for intoxicating liquor, in any quantity whatever, or who shall keep any place, structure or vehicle, transient or permanent, where any such liquor shall be sold or kept for sale, in any quantity whatever in any county wherein the operation or enforcement of statutes, charters or ordinances shall be suspended or such prohibition be in force, as in this Act provided, in violation of the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty (50) dollars and the cost of prosecution and be imprisoned in the county jail for not less than thirty (30) days, provided that the foregoing provisions in this section contained shall not apply to the keeper of any licensed drinking place until his license shall be annulled as hereinbefore prescribed, provided also that intoxicating liquor, manufactured in said county may be lawfully kept or stored at the place or places of such manufacture or any place in said county where necessary in due course of trans-



the sale of intoxicating liquors shall be prohibited within ..... county.

..... Clerk (or recorder)''

FORM OF SAID CERTIFICATE

''State of Minnesota )

County of ..... )

We, the undersigned, constituting the Board of Canvassers for said county, do hereby certify that we find and have so determined that, at the special election held in said county on the .... day of ..... 19... , on the question whether the sale of intoxicating liquors should be prohibited in said county . . . . votes were cast in favor of prohibiting such sale and . . . . votes were cast against prohibiting such sale, and that a majority of . . . . votes at said election was (in favor of or against according to the fact prohibiting such sale), (or that the result of said election was a tie, if such was the fact).

Dated this .... day of ....., 19....

..... County Canvassers.''

(Act Jan. 6, 1934, Ex. Ses., c. 46, §36.)

Each voter signing petition is required to swear or affirm to form of oath prescribed by statute but a single petition consisting of several sheets may be certified by notary or other officer at the end of the last sheet. Op. Atty. Gen. (218c-2), June 6, 1935.

3200-57. Separability clause.—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate any other part or provision in the remainder of the Act, and if any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case or provision, such judgment shall not impair or invalidate such part or provision as applied to any other case or situation within their terms. (Act Jan. 6, 1934, Ex. Ses., c. 46, §37.)

3200-58. Repeal.—Laws 1933, Chapter 115, and Laws 1915, Chapter 23, are hereby repealed. (Act Jan. 6, 1934, Ex. Ses., c. 46, §38.)

Sec. 39 of Act Jan. 6, 1934, cited, provides that the act shall take effect from its passage.

Laws 1915, c. 23, repealed hereby, is a local option law omitted from Mason's Minnesota Statutes of 1927 as having been superseded by the Eighteenth Amendment.

RESTRICTED TERRITORY IN CERTAIN CITIES

3200-58 1/2. Cities of the first class may grant licenses within restricted territory.—The governing body of any city of the first class now or hereafter having a population of 50,000 inhabitants or more, including any such city operating under a charter adopted pursuant to the provisions of Section 36, Article 4, of the Constitution of the State of Minnesota, and which city contains within its corporate limits any territory in which sales of intoxicating liquor have been heretofore prohibited by any special law or laws of this State, is hereby authorized and empowered to grant or refuse licenses to sell intoxicating liquors at any place within the corporate limits of any such city notwithstanding any provision to the contrary in any city charter or law of this State. (Act Jan. 9, 1934, Ex. Ses., c. 74, §1.)

This act applies to St. Paul only. Op. Atty. Gen., Feb. 17, 1934.

3200-58 1/2 a. Same—distance from educational institutions.—Provided however, that no licenses shall be issued to any one within a radius of one-half mile from the limits of the College of Agriculture, the University of Minnesota, nor to any one within a radius of fifteen hundred feet of any Academy, College, or University of higher education located within any such territory wherein sales of intoxicating liquors have been heretofore prohibited by any special

law or laws of this State. (Act Jan. 9, 1934, Ex. Ses., c. 74, §2.)

3200-58 1/2 b. Same—effective date—duration of power.—This Act shall take effect and be in force from and after its passage for a period of sixty days. (Act Jan. 9, 1934, Ex. Ses., c. 74, §3.)

Editorial note. The closing words of this section withdraws power to grant licenses after 60 days. If this gives to persons securing licenses within the permissive time a perpetual monopoly the act may be open to constitutional objections. It also presents the question whether a forfeited or terminated license can be renewed.

LIQUOR TAX ACT

3200-59. Definitions.—For the purposes of this bill:

(a) "Brewer" shall mean any person who manufactures malt liquor containing more than one-half of one per cent of alcohol by volume.

(b) "Wholesaler" shall mean any person who sells such malt liquor and intoxicating liquors to retail dealers.

(c) "Retailer" shall mean any person who sells such malt liquor and intoxicating liquors to a consumer.

(d) "Commissioner" shall mean the Liquor Control Commissioner.

(e) "Fermented Malt Beverages" shall mean any fermented malt liquor potable as a beverage containing more than one-half of one per cent of alcohol by volume. (Act Jan. 8, 1934, Ex. Ses., c. 58, §1.)

3200-60. Filing proof of federal permit.—Every manufacturer, wholesaler and brewer shall file with the Commissioner proof that he has a government permit together with the number thereof which shall be registered by the Commissioner. (Act Jan. 8, 1934, Ex. Ses., c. 58, §2.)

3200-61. Labels on containers.—No intoxicating liquor and no fermented malt beverage shall be sold, bartered, exchanged, offered or exposed for sale, kept in possession with intent to sell, or served in any premises unless there shall be placed upon each barrel, keg, cask, bottle or other container a label bearing the name and address of the manufacturer, wholesaler or brewer manufacturing said beverage and, in plain legible type, the registration number of said manufacturer, wholesaler or brewer. (Act Jan 8, 1934, Ex. Ses., c. 58, §3.)

A label "12 degree proof spirits" is misleading, as "12 degree spirits" would indicate 12% while "12 proof spirits" would indicate 6% liquor. Op. Atty. Gen. (218a-1), Aug. 3, 1934.

Trade-mark must be registered with secretary of state to be filed with liquor control commissioner and one filing trade-mark with secretary of state prima facie has right to ship liquors into state as against one who has filed trade-mark only with liquor control commissioner. Op. Atty. Gen. (218m), Apr. 27, 1935

3200-62. Excise tax.—(a) There shall be levied and collected on all intoxicating liquors, sold in this State, the following excise tax:

(1) On all light wines up to 14% of alcohol by weight, the sum of 10c per gallon.

(2) On all wines from 14% to 21% of alcohol by weight, the sum of 20c per gallon.

(3) On all wines from 21% to 24% of alcohol by weight, the sum of 40c per gallon.

(4) On all wines containing more than 24% of alcohol by weight the sum of 60c per gallon.

(5) On all natural sparkling wines containing alcohol, the sum of 60c per gallon.

(6) On all artificial sparkling wines containing alcohol, the sum of 30c per gallon.

(7) On all other liquors, liqueurs and cordials, the sum of 60c per gallon.

Provided that in computing the tax on any package of spirits a proportionate tax at a like rate on all fractional parts of a gallon shall be paid, except that all fractional parts of a gallon less than 1/16 shall be taxed at the same rate as shall be taxed for 1/16 of a gallon.

(b) An excise tax is hereby assessed, imposed and levied upon the sale, either directly or indirectly, of fermented malt beverages other than for shipment in interstate or foreign commerce. Such tax shall be levied and shall be collected at the rate of one dollar per barrel of thirty-one gallons, containing not more than 3.2 per cent of alcohol by weight, and a tax of \$2.00 per barrel of thirty-one gallons containing more than 3.2 per cent of alcohol by weight, and at a proportionate rate for fractional parts thereof. All the receipts from said taxes shall be paid into the general revenue fund by the Liquor Control Commissioner. (Act Jan. 8, 1934, Ex. Ses., c. 58, §4.)

Natural fermented cider artificially carbonated should be included in wine classification for taxation purposes. Op. Atty. Gen. (218k), Dec. 11, 1934.

(a). City establishing a municipal liquor store is not exempt from any liquor taxes. Op. Atty. Gen., Jan. 16, 1934.

(a) (5). "Natural sparkling wine" is one that generates its own carbonization while an "artificial sparkling wine" is one that is artificially carbonated. Op. Atty. Gen., Jan. 17, 1934.

**3200-63. Stamps—payment of tax—regulations—affixing stamps to containers.**—(a) The stamps here-in provided for shall be prepared and printed by the State Treasurer in such form and denominations as the Commissioner may require and shall be issued by such State Treasurer to the Commissioner upon requisition by him from time to time. The Commissioner shall make report to the State Auditor at least once each month of the number and amount of stamps sold by him, and shall upon depositing receipts from the sale of such stamps with the State Treasurer file a duplicate of such report with the Treasurer. All expenses of the State Treasurer in complying with the provisions of this Act shall be paid as other expenses of the liquor control Commissioner are paid.

(b) Such excise tax shall be paid by the purchase of stamps from the Commissioner, who shall designate the design and denominations thereof. The Commissioner shall by regulation, prescribe the manner in which said stamps shall be affixed and cancelled. Such stamps shall be cancelled by the person making the first sale of such fermented malt beverages within the state. No retailer shall sell or remove any fermented malt beverages from any barrel, keg, case or other container, unless the same shall have affixed thereto duly cancelled stamps of proper denomination. Every manufacturer, wholesaler, brewer or retailer shall be liable for the payment of the tax provided in this chapter on sales made for resale or consumption within this State, and shall be required to affix stamps of the proper amount on every barrel, keg, case or other container containing fermented malt beverages imported from without the state, sold or delivered to any purchaser or consumer within this State, unless such stamps shall have been previously affixed and cancelled. It shall not be necessary to affix stamps to individual bottles of fermented malt liquor, but no bottle containing the same shall be removed from containers for sale or consumption unless the original container in which the same was packed shall have affixed thereto stamps of proper denominations. Such stamps shall be affixed by the manufacturer, wholesaler, brewer or other person to each barrel, keg, case, or other container of such fermented malt liquor before any sale, except that as to wines containing less than 25% of alcohol by weight such stamps may be affixed at any time prior to sale to the consumer. (Act Jan. 8, 1934, Ex. Ses., c. 58, §5.)

Payment of premium on Liquor Control Commissioner's bond in excess of \$50,000 is not authorized, but state treasurer may issue liquor and beer stamps in excess of \$50,000 to commissioner upon his requisition. Op. Atty. Gen. (218h-6), Nov. 16, 1934.

**3200-64. Interstate shipments.**—Sales by a manufacturer, wholesaler or brewer for shipment outside the state in interstate commerce shall not be subject to the payment of the tax. (Act Jan. 8, 1934, Ex. Ses., c. 58, §6.)

**3200-65. Commissioner to enforce act—employees—record of sale of stamps—inspection of books and premises.**—The Commissioner shall enforce and administer the provisions of this chapter and shall have authority to employ and fix the compensation of any employees necessary for the performance of his duties hereunder.

The Commissioner shall keep a suitable record of the sale of all stamps which shall show the dates of the sale thereof and the names of the purchasers. The Commissioner may refund to any purchaser the money paid for any stamps returned unfit for use or otherwise unused, and shall prescribe the method of proof required for obtaining such refund.

The Commissioner or his duly authorized employees, may at all reasonable hours enter in and upon any licensed premises, and examine the books, papers and records of any brewer, manufacturer, wholesaler or retailer, for the purpose of inspecting the same and determining whether the tax imposed by this chapter has been fully paid, and shall have the power to inspect and examine any premises where fermented malt beverages are manufactured, sold, exposed for sale, possessed or stored, for the purpose of determining whether the provisions of this chapter are being complied with. (Act Jan. 8, 1934, Ex. Ses., c. 58, §7.)

No search warrants may be issued. Op. Atty. Gen., Feb. 8, 1934.

Liquor control commission has power to expend money from sale of tax stamps to administer various acts but cannot use revenue obtained by issuance of licenses, permits and sale of labels. Op. Atty. Gen., Feb. 20, 1934.

Insofar as tax law is concerned, the commissioner is charged with the duty of enforcing and administering the provisions thereof and the primary responsibility of apprehending violators rests upon him, though local officials are primarily charged with the duty of enforcing sale provisions. Op. Atty. Gen. (218h-2), Aug. 23, 1934.

If an intoxicating liquor inspector is rightfully within a place where nonintoxicating liquors are sold, he may seize intoxicating liquor for purpose of using same for evidence in a prosecution, but he may not search premises for intoxicating liquors, and in such case a search warrant is not necessary. Op. Atty. Gen. (218f), Feb. 5, 1935.

**3200-66. Invoices of liquors imported—checking.**—For the purpose of fixing the amount of tax on all foreign or imported intoxicating liquors, the consignee of such liquors shall send all invoices for shipments of liquor to the office of the Liquor Control Commissioner immediately upon receipt of the same. The consignees of any intoxicating liquors shall send a copy of all invoices of shipments of liquor to the office of the Liquor Control Commissioner, immediately upon receipt of same. Upon arrival of any intoxicating liquor, imported into this state, the same shall be checked against the invoice by an inspector of the Liquor Control Commissioner and the amount of stamps equivalent to the tax shall be affixed to the package. These stamps shall be designated as "Package Stamps." (Act Jan. 8, 1934, Ex. Ses., c. 58, §8.)

**3200-67. Unlawful affixing of labels—forgery and counterfeiting.**—Any person, other than the person or corporation registering the same, who shall place upon any barrel, keg, cask, bottle or other container containing any fermented malt beverage any label bearing a number registered by any other person or corporation, or who shall place upon any label a permit number not registered in the office of the Commissioner who shall falsely or fraudulently make, forge, alter or counterfeit any stamp prescribed by this Act shall be guilty of a gross misdemeanor. (Act Jan. 8, 1934, Ex. Ses., c. 58, §9.)

**3200-68. Unstamped liquor confiscated.**—Intoxicating liquor and fermented malt liquor in the possession of any person without proper stamp or labels as herein provided, without authority to have such intoxicating liquor and fermented malt liquor, without such stamps or labels, may be confiscated, as other contraband articles may be confiscated by law. (Act Jan. 8, 1934, Ex. Ses., c. 58, §10.)

Commissioner could pass a regulation making it unlawful for a person to have in his possession liquor without proper tax stamps and labels and violation thereof would constitute a misdemeanor, though person in possession has it for his own personal consumption. Op. Atty. Gen. (218k), Nov. 5, 1934.

Liquor bearing proper tax stamp cannot be destroyed after being used as evidence in prosecution in dry county. Op. Atty. Gen. (218f), June 24, 1935.

Liquor control commissioner cannot destroy confiscated liquor but must hold them for disposal of the legislator. Op. Atty. Gen. (218g-16), July 1, 1935.

**3200-69. Offenses—felony.**—Every manufacturer and/or wholesaler and anyone licensed to sell intoxicating liquor, who evades or attempts to evade a payment of the tax thereon or fraudulently neglects or refuses to keep full and complete accounts in the book or books of accounts, or who refuses or neglects to make true and exact entries and reports of the same in the manner as required by the rules and regulations prescribed by the Liquor Control Commissioner, or in any manner required by law, or who in any manner conspires to violate this Act or any section of it, or fails to do or cause to be done, any of the things required by law to be done to such person or who intentionally makes false entry in said book or in any statement, pertaining to his business as contemplated in this Act, or anyone who shall refill or cause to be refilled, a bottle or container which previously had contained intoxicating liquor, for the purpose of evading the payment of the tax thereon, or in any manner conspires to evade, avoid or defraud the State out of the payment of the proper tax upon intoxicating liquor, shall be guilty of a felony. (Act Jan. 8, 1934, Ex. Ses., c. 58, §11.)

No case of felony against seller of bottle of liquor falsely branded is made out unless there is proof that seller was one who actually refilled bottle with moonshine. Op. Atty. Gen. (218f), Aug. 23, 1934.

An unlicensed person selling liquor without paying tax may be prosecuted under last part of this section. Op. Atty. Gen. (218k), Sept. 26, 1934.

**3200-70. Offenses—misdemeanor.**—Any person who shall violate any of the provisions of this chapter for which specific penalty is not herein provided shall be deemed guilty of a misdemeanor. (Act Jan. 8, 1934, Ex. Ses., c. 58, §12.)

**3200-71. Certain cities may issue liquor licenses.**—The governing body of any city of the first class now or hereafter existing, and which city contains within its corporate limits any territory in which sales of intoxicating liquors have been heretofore prohibited by any law of this state, and which city has enjoyed such a substantial increase in business, manufacturing and population that it has increased its population 100,000 or more between the year 1900 and the year 1930, as shown by the United States census for said years, resulting in the extension of such prohibited territory aforesaid of a substantial portion of the business, commercial and industrial activities of such city, is hereby authorized and empowered by a three-fifths vote of the governing body thereof to grant licenses to sell intoxicating liquors in such prohibited territory provided that no greater number of licenses shall be issued therein than has been heretofore issued in such territory under authority granted by Chapter 74, Laws of 1933-34, notwithstanding any provision to the contrary in any city charter or law of this state. (Act Apr. 1, 1935, c. 78, §1.)

**3200-72. Restrictions.**—This act shall not be construed as authorizing the granting of a license to sell intoxicating liquor, within the Capitol or upon the grounds thereof, upon the State Fair grounds, or within one-half mile thereof, at any place on the east side of the Mississippi River, within one mile from the main building of the University of Minnesota, within one-half mile of the limits of the State College of Agriculture, nor within a radius of 1500 feet of any academy, college or university of higher education located within any such territory where sales of intoxicating liquors have been heretofore prohibited by any law of this state, nor in any portion

of any such city which is zoned as a residence district or multiple dwelling district, excepting insofar as such business is permitted under the provisions of any zoning law. (Act Apr. 1, 1935, c. 78, §2.)

**3200-73. Law may be repealed by popular vote.**—The powers granted by this law shall be and the same are hereby repealed and annulled as to any such city whenever the legal voters thereof express themselves in favor of such annulment in the manner hereafter provided. The question of the continuation of such powers in the governing bodies shall be submitted to the voters whenever the governing body of any such city by a three-fifths vote of the membership thereof decides so to do, or whenever a petition is filed with such governing body signed by 5 per cent in number of the legal voters of such city voting at the last general municipal election requesting such submission. The question shall be on a separate ballot and in the following form: "Shall the council continue to grant the liquor licenses authorized by Chapter — Laws 1935." If the governing body submits the question, it shall determine the day on which the question shall be submitted to the voters. If the question is submitted pursuant to petition, such petition shall set forth the day on which the submission is to be had, which shall not be less than 60 days after the date of filing such petition but in either case, whether submitted by the governing body or by petition, such question shall be submitted only on a state or municipal primary or general election day occurring in such city. The ballots of such voting shall be duly canvassed, certified and returned in the same manner and at the same time as the returns for such other election and the election officials shall be the same as provided for such other election. If a majority of those voting on the question as hereinbefore provided answer in the negative, the governing body shall thereafter have no authority to exercise the powers granted by this law, provided, however, that liquor licenses issued under authority of this act and existing at the time of such election shall remain in full force and effect for a period of 60 days after such election. (Act Apr. 1, 1935, c. 78, §3.)

**3200-74. Provisions severable.**—The provisions of this law are hereby declared to be severable and if any section of this law shall be declared invalid, no other section shall be affected thereby. (Act Apr. 1, 1935, c. 78, §4.)

**3200-75. Liquor receipts to be paid into state treasury.**—All taxes, penalties, license fees and receipts of every kind, character and description, provided for and payable to the state under the terms and provisions of Chapters 46 and 58, Special Session Laws of 1933 [§§3200-21 to 3200-70], including all moneys collected by the commissioner under rules and regulations established by him, such as certificate labels, truck labels, case labels, and any other form that he may establish, shall be paid into the state treasury the same as other departmental receipts, and are to be credited to the revenue fund of the State of Minnesota. (Act Apr. 5, 1935, c. 130, §1.)

**3200-76. Outstanding certificates to be redeemed.**—All outstanding certificates of indebtedness issued under and pursuant to the provisions of Chapter 67, Special Session Laws of Minnesota for 1933 [§§4401-10 to 4401-20], shall be redeemed by the Executive Council out of any monies received as specified in Section 1 of this act. (Act Apr. 5, 1935, c. 130, §2.)

**3200-77. Inconsistent acts repealed.**—All acts and parts of acts inconsistent with this act are hereby repealed. (Act Apr. 5, 1935, c. 130, §3.)

Sec. 4 of Act Apr. 5, 1935, cited, provides that the act shall take effect from its passage.

**3200-78. Certain liquor must be registered.**—No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors containing

more than 25 per cent of alcohol by volume ready for sale without further processing unless such brand or brands shall be duly registered in the patent office of the United States. (Act Apr. 29, 1935, c. 390.)

This statute held contrary to Fourteenth Amendment of federal constitution. *Joseph Triner Corp. v. A.*, (US DC-Minn), 11FSuppl145.

In connection with registered brand name, there may be used any common name designating contents of bottle, such as whiskey, gin, cordial, rye whiskey, scotch whiskey, five-star brandy, etc. Op. Atty. Gen. (218m), May 15, 1935.

#### PROHIBITORY LAW (Cont)

##### 3201 to 3208 [Repealed].

Repealed by Act Mar. 31, 1933, c. 130.

##### Annotation for 3201.

###### 1. In general.

Sections 3200 to 3229 suspend the operation of G. S. 1913, §§3131 to 3135. Op. Atty. Gen., Mar. 17, 1933.

###### 2. Manufacture.

Conviction for manufacture of intoxicating liquor cannot stand, where there is no evidence that the liquor was either intoxicating or potable as a beverage. 171M367, 214NW60.

###### 3. Possession.

Evidence held sufficient to support conviction for unlawful possession of intoxicating liquor. *State v. Goldberg*, 183M216, 236NW309. See Dun. Dig. 4946.

###### 4. Transportation.

Evidence held to sustain conviction. 179M187, 288NW615.

Evidence held not to sustain a conviction of the unlawful transportation of liquor. *State v. Novak*, 181M574, 233NW309. See Dun. Dig. 4946.

Evidence held to sustain conviction of unlawful transportation. 181M303, 232NW335. See Dun. Dig., 4946.

###### 5. Sale.

In prosecution for sale of liquor to a minor court properly instructed that evidence of prior conviction of defendant's witness was admitted only as bearing on his credibility. 171M173, 213NW923.

Evidence held to sustain conviction for sale to minor. 171M429, 214NW270.

Evidence held to support finding of intoxicating quality and sale of liquor. 172M76, 214NW474.

That defendant had intoxicating liquor in possession for sale may be proved without offering the liquor in evidence. 172M130, 214NW778.

Evidence justified finding of guilty. *State v. Trisko*, 177M518, 25NW426.

It would be unlawful for grocer to possess or to sell wort knowing that it was designed or intended for use in manufacture of beer. Op. Atty Gen., May 25, 1932.

###### 6. Indictment.

Oral complaint for manufacture held sufficient. 171M292, 213NW910.

Under an information charging sale of "moonshine alcohol" conviction was proper on evidence of sale of "moonshine whiskey." *State v. Viering*, 175M475, 221NW681.

Indictment may be amended to show prior conviction. Op. Atty. Gen., Dec. 5, 1929.

###### 7. Evidence.

Evidence of similar offenses held properly admitted. 171M429, 214NW270.

Testimony that liquor was moonshine whiskey was sufficient to sustain finding that it was potable. 171M437, 214NW652.

Evidence, held insufficient to support conviction for possession of liquors. *State v. Keefe*, 180M124, 230NW257(1).

Evidence held sufficient to support a conviction under a city ordinance of having possession of intoxicating liquor for purpose of sale. *State v. Olson*, 187M527, 246NW117. See Dun. Dig., 4946.

##### Annotations for §3204.

City attorney acting also as city clerk of St. Peter was entitled to retain fee paid for issuance of ethyl alcohol permit. Op. Atty Gen., Aug. 30, 1933.

##### Annotations for §3207.

After the repeal of enforcement laws passed in 1919 a doctor or dentist is allowed to receive each year five gallons of alcohol and six quarts of medicinal whiskey for office use as permitted by the federal law. Op. Atty. Gen., Apr. 8, 1933.

##### Annotations for §3208.

Fees collected under this section are to be paid into the county treasury in counties where a definite salary has been provided for the clerk of the district court. Op. Atty. Gen., Jan. 18, 1930.

Repeal of enforcement laws passed in 1919 does away with the payment to the district court clerk of the 10 cent filing fee on liquor prescriptions filed by druggists. Op. Atty. Gen., Apr. 8, 1933.

##### 3208-1 to 3208-4. [Repealed].

Repealed by Act Mar. 31, 1933, c. 130.

##### 3209 to 3228 [Repealed].

Repealed by Act Mar. 31, 1933, c. 130.

##### 3209.

It is not mandatory upon county attorney to institute abatement proceedings where persons have been convict-

ed in a municipal court for violation of city liquor ordinances. Op. Atty. Gen., June 15, 1931.

##### 3211.

Op. Atty. Gen., May 25, 1932; note under §3201.

##### 3214.

Evidence held to warrant conviction for maintenance of a liquor nuisance. 177M278, 225NW20.

In abatement proceedings in district court, where one has been convicted of violation of city liquor ordinance, certified copies of records of municipal court are admissible. Op. Atty. Gen., Apr. 14, 1932.

##### 3216.

In view of Laws 1933, c. 130, abatement proceedings cannot now be brought. Op. Atty. Gen., June 21, 1933.

##### 3220.

It would not have been prejudicial error to permit introduction of liquor in evidence though it was obtained without a warrant. 172M130, 214NW778.

Laws 1933, c. 130, repealed majority of state intoxicating liquor enforcement laws, including this section. Op. Atty. Gen., Apr. 15, 1933.

There is now no law authorizing law enforcement officers to make search for intoxicating liquors but detectives may be retained for purpose of making purchases and their evidence would be admissible. Op. Atty. Gen., May 15, 1933.

There is now no law authorizing issuance of search warrant to discover evidence of violation of liquor laws. Op. Atty. Gen., June 27, 1933.

There can now be no searches and seizures for violation of state liquor laws, but a city may provide by ordinance for search warrants in connection with violation of city ordinances relating to intoxicating liquors. Op. Atty. Gen. (218f-3), Aug. 23, 1934.

##### 3225.

Op. Atty. Gen., May 25, 1932; note under §3201.

##### (f).

One making gift intoxicating liquor to minor is guilty of gross misdemeanor and not felony. Op. Atty. Gen., Apr. 10, 1933.

###### 1. Sentence.

No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.

###### 2. Indictment and information.

Indictment charging maintenance of a liquor nuisance, held sufficient. 177M278, 225NW20.

Indictment may be amended to show prior conviction. Op. Atty. Gen., Dec. 5, 1929.

##### 3226.

Sheriff agreeing to pay detective \$25 for each conviction for violation of liquor laws could pay such amount in pending cases for convictions occurring after effective date of Laws 1933, c. 130. Op. Atty. Gen., Apr. 28, 1933.

##### 3229 to 3234 [Repealed].

Repealed by Act Mar. 31, 1933, c. 130.

##### 3230.

This section is repealed by Laws 1933, c. 130. Op. Atty. Gen., Apr. 4, 1933.

This section is repealed by Laws 1933, c. 115. Op. Atty. Gen., Aug. 19, 1933.

##### 3235 [Repealed].

Repealed by Act Mar. 31, 1933, c. 130.

Complaint held insufficient to support conviction for maintaining a nuisance in violation of ordinance. 171M295, 213NW909.

Oral complaint for manufacture held sufficient. 171M292, 213NW910.

Evidence sustained conviction for manufacture in violation of ordinance. 171M292, 213NW910.

##### 3237. Certain acts declared to be murder.

Section is still in force. Op. Atty. Gen., June 21, 1933.

##### 3238. [Repealed.]

Repealed. Laws 1933, c. 130.

**3238-1. Sale of intoxicating liquors liable to cause permanent, etc.**

Section is still in force. Op. Atty. Gen., June 21, 1933.

##### 3238-2. [Repealed.]

Repealed by Act Mar. 31, 1933, c. 130.

**3238-2½. Selling or giving away poisonous liquor a gross misdemeanor.**—Any person who shall sell or give away for beverage purposes any poisonous liquor or liquid consisting of or that contains methyl alcohol, denatured alcohol, denaturing material, or any other poisonous substance capable of causing serious physical or mental injury to any person who may drink the same shall be guilty of a gross misdemeanor. (Act Apr. 19, 1929, c. 249, §1.)

Section is still in force. Op. Atty. Gen., June 21, 1933.

##### 3238-2½ a. [Repealed.]

Repealed by Act Mar. 31, 1933, c. 130.

**3238-2½ b. Application.**—Nothing in this act shall be held or construed to repeal or in any way modify, amend or effect any existing statute in this state re-

lating to intoxicating liquor. (Act Apr. 19, 1929, c. 249, §3.)

**3238-3. Places where sale forbidden.**

Enforcement provisions of licensed public drinking places and local option laws are not now effective. Op. Atty. Gen., May 18, 1933.

County board with approval of state fair board and board of town in which state fair grounds are situated may issue license to sell nonintoxicating beer to a restaurant to be located on fair grounds for three days. Op. Atty. Gen., June 17, 1933.

Section still in force. Op. Atty. Gen., June 21, 1933.

Local option vote was of no effect in Indian territory. Op. Atty. Gen., Mar. 8, 1934.

Dry vote in village of North Mankato was without effect upon right of city of North Mankato to issue liquor licenses. Op. Atty. Gen., Mar. 19, 1934.

Licenses may be issued for sale of intoxicating liquors in city of Cloquet within the Indian country. Op. Atty. Gen. (218j-9), Oct. 20, 1934.

**3238-4 to 3238-9.**

Sections are still in force. Op. Atty. Gen., June 21, 1933.

**3238-9. Sale, etc., to minors, habitual drunkards, etc.**

A person of Indian blood is one having Indian blood in his veins regardless of whether it is from father's side or the mother's side. Op. Atty. Gen., Feb. 26, 1934.

**3238-10. Giving to, or procuring or purchasing for, minors, etc.**

Gift of liquor to minor is a gross misdemeanor under Laws 1911, c. 290, and not a felony. Op. Atty. Gen., Apr. 10, 1933.

One making gift of intoxicating liquor to minor is guilty of gross misdemeanor and not felony. Op. Atty. Gen., Apr. 10, 1933.

Section still in force. Op. Atty. Gen., June 21, 1933.

**3238-11 to 3238-25.**

Sections are still in force. Op. Atty. Gen., June 21, 1933.

**CIVIL ACTIONS**

**3239. Action for injuries caused by intoxication.**

Makers and sellers of moonshine are liable to wife of buyer for injury to her support. *Benes v. C.*, 186M578, 244NW72. See Dun. Dig. 4928a.

**CHAPTER 16A**

**Cigarettes**

**3242. Licensing of sale of cigarettes, etc.**

This statute does not require that a department of the State, such as the State University obtain a license before selling cigarettes. Op. Atty. Gen., Nov. 10, 1931.

Owners and operators of machines vending cigarettes purchased by them in wholesale lots must have retailer's license. Op. Atty. Gen., Apr. 2, 1934.

Representatives, agents and employees of large tobacco companies going about the state and decorating windows may be required to obtain licenses where they carry cigarettes along with them to supply dealers who are short on orders or whose cartons have dried out. Op. Atty. Gen. (829c-6), June 26, 1935.

License is unnecessary for sale on trains. Op. Atty. Gen. (829e-6), July 10, 1935.

**3243. Licenses for sale and manufacture of cigarettes.**

License for the manufacture, sale, exchange, barter, disposition of or giving away or keeping for sale of cigarettes, cigarette paper or cigarette wrappers for the making of cigarettes may be granted by the state dairy and food commissioner, who shall provide a suitable blank form of application for the use of applicant. The fee for such license shall be twelve (12) dollars and shall expire on December 31, next after its issue, and no license shall be issued for a longer term than one year, and shall not be transferable from one person to another person or from the ownership to whom issued to another ownership. Provided, that a license issued for less term than one year, the fee for same shall be computed at the rate of one dollar for each calendar month or fractional part of such month. A penalty of fifty per cent of the license fee shall be imposed if license is not applied for within the same calendar month that first sale of cigarettes is made. Each store where such cigarettes, cigarette paper or cigarette wrappers for the making of cigarettes are sold at retail shall pay the license fee herein provided for; provided, that any duly licensed manufacturers, jobber or wholesaler, may, under his license as such, sell and deliver from his established place of business or otherwise, cigarettes, cigarette paper or cigarette wrappers for the making of cigarettes, to any person within the State of Minnesota then having a license as herein provided. Provided further, that a license fee due either in January or February, 1936, may be paid prior to April 1, 1936, without a penalty, and provided further,

that any penalties heretofore paid, on account of the fee imposed herein, shall be refunded to the parties who made such payment or payments. ('19, c. 348, §4; Mar. 16, 1933, c. 86; Apr. 10, 1933, c. 187; Feb. 27, 1935, c. 25; Jan. 24, 1936, Ex. Sess., c. 86.)

Under Laws 1933, c. 187, one license is sufficient when sale is made in two buildings joined by an archway, one side being operated as a tavern and other as hotel, if both are considered as one business. Op. Atty. Gen., Aug. 25, 1933.

Traders in cigarettes on Indian reservations must have license if they are white men or Indians who have given up their tribal relations, but not if they are tribal Indians. Op. Atty. Gen., Sept. 15, 1933.

Laws 1933, c. 187, amending this section, was not repealed by Laws 1925, c. 25, and such amendment is still in effect. Op. Atty. Gen. (829b), Apr. 8, 1935.

**3244. Written application to be filed.**

A licensee having several stands for the sale of cigarettes in a building designed for a single purpose and under a single control is not required to obtain more than one license; and in the case of a club the same rule would apply whether sales were made to members of the club or to outsiders. Op. Atty. Gen., Mar. 1, 1930.

**3245. When license is not to be granted.**

Cigarette license should not be granted to an exclusive liquor store. Op. Atty. Gen., Mar. 26, 1934.

**3248. Disposition of cigarette license fees.**—The fees collected under the provisions of this act shall be paid into the state treasury by the dairy and food commissioners. The state treasurer shall transmit ninety per cent of such license money annually to the treasurer of the city, village or township from which the license is issued. The remaining ten per cent shall be credited to the General Revenue fund. ('19, c. 348, §9; Apr. 23, 1929, c. 291, §1.)

Refunds cannot be made to persons who obtained and paid for cigarette licenses and went out of business before the end of the current year for which the license was paid, unless money is appropriated for that purpose. Op. Atty. Gen., Nov. 24, 1931.

A municipality selling cigarettes at amusement centers is not obliged to obtain a license. Op. Atty. Gen., Jan. 29, 1932.

Penalties remain in state treasury and only fee should be distributed to local municipalities. Op. Atty. Gen., Apr. 5, 1932.

**3249. Violation a misdemeanor.**

Where one is vending cigarettes by machine without retailer's license, inspector may take entire machine and its contents as evidence, but must return it after trial. Op. Atty. Gen., Apr. 2, 1934.

**CHAPTER 16B**

**Athletic Commission**

**3251 to 3260 [Repealed.]**

Repealed by Act Jan. 28, 1933, c. 7, §16, post, §3260-16, effective May 1, 1933.

**3252.**

State Athletic Commission could not validly give a bonus to the secretary of the commission as reimbursement

for expenses incurred nor "in recognition of the efficiency in which he has handled the affairs of the commission." Op. Atty. Gen., June 2, 1931.

**3253.**

Since the enactment of this act contract for management of prize fighter is not illegal. *Safro v. L.*, 184M336, 238NW641.