

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 335.73 UNIFORM NEGOTIABLE INSTRUMENTS ACT

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be limited to the exercise of its customary diligence to prevent payment, drawee nevertheless waived its right to receive a written stop order when it did not insist upon a written order but instead declined to honor the order on the sole ground that it was too late. It is held that the drawee, in failing to take any action to prevent payment of the check after the stop order was given, had not exercised either its customary diligence or ordinary diligence. *Bohlig v First National Bank in Wadena*, 233 M 523, 48 NW(2d) 446.

### PROMISSORY NOTES, CHECKS

#### 335.73 CHECK IS BILL OF EXCHANGE

Validity of provision in stopping payment order limiting liability for payment. 34 MLR 4.

Delivery by defendant to plaintiff of a check as a gift upon which payment was stopped before it was presented to the bank, does not constitute a valid gift *inter vivos* since there was no absolute disposition of the gift which the defendant intended to give the plaintiff. Delivery of the check is not delivery of money but is delivery of an order. *Laura Baker School v Pflaum*, 225 M 181, 30 NW(2d) 290.

#### 335.74 WITHIN WHAT TIME A CHECK MUST BE PRESENTED

In mailing checks to a person with the same name as the intended payee, the federal government is not negligent; nor is it precluded from recovering by its failure to promptly notify the collecting bank of the forgery. 37 MLR 201.

#### 335.743 CHECK NOT ASSIGNMENT OF FUNDS

Liability of bank for paying a stopped check. 33 MLR 179.

Delivery by defendant to plaintiff of a check as a gift upon which payment was stopped before it was presented to the bank, does not constitute a valid gift *inter vivos* since there was no absolute disposition of the gift which the defendant intended to give the plaintiff. Delivery of the check is not delivery of money but is delivery of an order. *Laura Baker School v Pflaum*, 225 M 181, 30 NW(2d) 290.

335.76 Unnecessary.

### POLICE REGULATIONS

#### CHAPTER 340

### INTOXICATING LIQUORS, BEER

#### 340.01 NON-INTOXICATING BEVERAGES; SALE; LICENSE

HISTORY. 1911 c 131 s 1; GS 1913 s 3189; 1933 c 116 s 1; 1945 c 589 s 1; 1949 c 700 s 1.

The business of selling intoxicating liquor at retail for use as a beverage is peculiarly subject not only to national and state but to local regulation. *Anderson v City of St. Paul*, 226 M 186, 32 NW(2d) 538.

A license to sell non-intoxicating malt liquor is in the nature of a privilege and, as such, subjects the licensee to the possibility of reasonable regulations, including restrictions on the use of the premises on which the sale is licensed. *Cleveland v Rice County*, ..... M ....., 56 NW(2d) 641.

A petition for injunction against a place of business on the sole ground that beer is sold therein and with no allegation or complaint as to the conduct and manner of the operation of the business and with no allegation or contention as to the alcoholic content or intoxicating quality of the product being sold does not state a cause of action. *State v Bliss*, 185 P(2d) 221.

Ordinances of the village of Falcon Heights relating to the sale of non-intoxicating malt beverages or cigarettes, do not apply to the sale of such products on the state fair grounds, and the village cannot require persons making such sales to secure said licenses. OAG Sept. 5, 1950 (4).

A village councilman may hold a 3.2 beer license if he enters into no contractual relation with the city. The giving of a bond is a contractual relation. The councilman should not vote on the question of granting or revoking his license. OAG Aug. 18, 1949 (90-E-4).

A county may specify the provisions on which a 3.2 beer license be held and the place operated. OAG July 14, 1948 (125-A-14).

A non-intoxicating malt liquor license may not be issued to a person who has previously been convicted of violating any provision of section 340.01. OAG Dec. 8, 1952 (217-B-1).

The county board may issue a license for the sale of non-intoxicating malt liquor in a rural tavern, the statutory provisions having been complied with. OAG Feb. 2, 1947 (217-B-2).

The power to issue a license for a place outside of village limits is in the county board. OAG Aug. 23, 1948 (217-B-2).

A retail non-intoxicating malt liquor license may be issued to an applicant who is the spouse of a licensed wholesaler, provided the spouse is not directly or indirectly interested in the retail license. OAG Jan. 15, 1953 (217-B-2).

The number of 3.2 beer off sale licenses to be granted by a municipality is not fixed by statute. The council must exercise reasonable discretion in determining who is entitled to such licenses and how many to grant. OAG Feb. 7, 1949 (217-B-4).

An on sale non-intoxicating liquor license cannot be granted to a person who has been convicted of violating the city ordinance which provides that a licensee convicted of the violation of the ordinance cannot receive a new license for a certain time after conviction; but, if no state law has been violated, the ordinance may be amended so as to enable the council to grant the license. OAG May 4, 1950 (217-B-4).

Licenses for the on sale or the off sale of non-intoxicating malt liquor may not be issued to the partner of a person convicted of law violations. Upon the dissolution of partnership, licenses may be issued to the partner who was not convicted. OAG June 8, 1953 (217-B-5).

Non-intoxicating malt beverage licenses are not transferable. OAG Aug. 13, 1947 (217-B-6).

Upon the dissolution of a partnership the remaining partner, who continues to operate under an on sale license must obtain a new beer license, if the licensing ordinance does not provide for a transfer thereof. OAG Sept. 15, 1952 (217-B-6).

The requirement that no license may be issued if within five years the applicant has been convicted of a violation of any law relating to the sale of either non-intoxicating malt liquor or intoxicating liquor applies in all cities. OAG Jan. 23, 1950 (217-B-8).

The refusal of a town board to consent to the issuance of a license for the sale of non-intoxicating malt liquor in the town is not an abuse of discretion when 80 percent of the voters of the town are opposed to such a grant. OAG May 10, 1950 (217-B-8).

A license for the sale of non-intoxicating malt liquor may be renewed in a case where an employee of the licensee has been convicted of a violation and the licensee personally has not been so convicted. OAG April 9, 1952 (217-B-8).

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A non-intoxicating malt liquor license may not be granted to a person who is not the owner of the business nor to the wife of the owner. Any action revoking a license may be reconsidered by the council if permissible under the applicable rules of procedure governing that body. OAG Feb. 7, 1950 (217-B-9).

Revocation of license for non-intoxicating malt liquor upon conviction for sale to a minor is not mandatory unless the local ordinance so provides. OAG Jan. 30, 1952 (217-B-9).

This section does not prohibit the granting of a license to the wife of a person previously convicted of a violation of the liquor laws. OAG June 18, 1952 (217-B-9).

The question of the reasonableness of an ordinance insofar as it might require separate facilities for men and women in 3.2 beer taverns is one that would have to be determined from all facts relating to the conduct of the business. At any rate, if the present situation is a nuisance, the health officer of any municipality may cause a removal of the nuisance and provide for prevention or abatement of same. OAG July 17, 1951 (217-C).

The holder of a beer license has no vested right which would be impaired by a change in the terms of the ordinance as respects the hour of sale; and a village may prohibit the sale of beer on Sundays and make the ordinance effective immediately, notwithstanding there are outstanding beer licenses. OAG Sept. 8, 1947 (217-F).

A county board may regulate and control beer taverns and may establish closing hours for them, which are shorter than those prescribed by statute. OAG Nov. 6, 1947 (217-F).

The power to license and regulate the business of selling 3.2 beer at retail is vested in the county board and not in the town board as to places located outside of a city or village; but the town board possesses authority to give or refuse consent to the issuance of such license by the county board. OAG Feb. 16, 1948 (217-F).

Hours of sales for rural taverns are fixed by the county board and not by the town board. OAG May 11, 1949 (217-F).

A village may enact an ordinance closing for all purposes a place of business licensed for the sale of non-intoxicating malt liquor. OAG Oct. 15, 1951 (217-F).

The county board may adopt a regulation prohibiting the holders of licenses for the sale of non-intoxicating malt liquor from knowingly permitting the sale or the possession of intoxicating liquor on the premises, and subjecting violators to punishment as a misdemeanor. OAG June 2, 1952 (217-F-2).

A minor under the age of 21 but over the age of 18 is not permitted to be employed in a 3.2 beer tavern unless accompanied by his parents or guardian. OAG Feb. 2, 1951 (217-F-3).

Where beer is sold in a dance hall in the presence of minors who are there for the purpose of dancing, there is a violation of section 340.01 and it is a misdemeanor. The licensing authority may be mandamusd to revoke a beer license unlawfully issued. OAG July 19, 1951 (217-F-3).

A minor watching a wrestling match in a beer parlor would be loitering there within the meaning of section 340.01, even though beer was not sold during the time when the wrestling match takes place. OAG March 18, 1952 (217-F-3).

A minor who is unaccompanied by a parent or guardian may not play a pinball machine in an establishment licensed to sell non-intoxicating malt liquor. OAG Nov. 19, 1953 (217-F-3).

The county board of Hennepin County has authority under section 340.01 to license the sale of 3.2 beer to be sold on a boat navigating upon the waters of Lake Minnetonka within Hennepin County. When the boat is tied to the dock at Excelsior village, if the boundary of the village is at the water's edge and the boat is beyond such boundary, a village license would not be required. OAG Oct. 28, 1948 (217-F-4).

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A wholesaler licensed by one municipality need not obtain a wholesaler's license in another municipality in order to do business in that municipality. OAG April 20, 1950 (217-H).

The governing bodies of municipalities may prohibit altogether the consumption or display of intoxicating liquor in places licensed for the sale of non-intoxicating malt liquors. OAG July 24, 1950 (218-F).

'A grocery or drug store licensed for the sale of beer may employ minors. OAG April 14, 1953 (270-A-4).

A village ordinance prohibiting a coin-operated music machine in a 3.2 beer establishment on Sunday is valid. OAG Aug. 12, 1953 (477-B-26).

Whether a person operating a restaurant with certain space available for dancing is operating a dance hall so as to exclude him from being entitled to an off sale beer license is a question of fact. OAG July 7, 1948 (802-A-3).

Except where dancing is incidental to restaurant or hotel service, it is not permitted in an establishment licensed for the sale of intoxicating liquor. OAG July 27, 1951 (802-A-10).

Minors are prohibited from attending a dance at a rural tavern licensed by the county board. OAG July 25, 1947 (802-A-15).

A town is not liable for occurrences in a 3.2 beer tavern simply because it consented to the issuance of a license by the county board. OAG Feb. 14, 1950 (844-H).

### 340.013 MALT LIQUOR LICENSE FEES, DIVISION

HISTORY. 1949 c 581 s 1.

The town board receives one-half of the fee paid to the county board for licensing the sale of non-intoxicating malt liquors. The town board cannot charge an additional fee for approving the application. OAG Nov. 5, 1949 (217-D-8).

### 340.02 LICENSE REQUIRED TO SELL

HISTORY. 1933 c 116 s 2; 1943 c 459 s 1; 1945 c 595 s 1; 1949 c 475 s 1; 1949 c 700 s 2; 1953 c 346 s 1, 2.

A village councilman may have a village license unless the ordinance requires the giving of a bond, which would constitute a contract. OAG Aug. 15, 1949 (90-E-4).

If the spouse is not directly or indirectly interested, a retail non-intoxicating malt liquor license may be issued to an applicant who is the spouse of a licensed wholesaler. OAG Jan. 16, 1953 (217-B-2).

The adoption by the legislature, in 1933, of the law permitting and regulating the sale of non-intoxicating malt liquor, 3.2 beer, would be controlling over any inconsistent charter provision. It would have the effect of changing the provision of the charter insofar as it is inconsistent with that law. OAG Feb. 8, 1951 (217-B-4).

The annual license fee to be charged to holders of licenses for the sale of non-intoxicating malt liquor by villages is \$5. The council has no authority to fix a greater or lesser sum for such license. OAG Nov. 23, 1953 (217-B-4).

The village council may provide for a less fee for club licenses than for other licenses; but the annual license fee cannot be pro-rated based on the number of months the club is open. OAG Sept. 14, 1948 (217-B-5).

A governing body of a municipality may classify and fix different license fees for the "on sale" of non-intoxicating malt liquor for various types of establishments such as drug stores, restaurants, hotels, clubs, and establishments for the sale of non-intoxicating malt beverages, cigars, cigarettes, all forms of tobacco, beverages and soft drinks at retail. OAG Jan. 28, 1953 (217-B-5).

Where a licensee holding a non-intoxicating malt liquor license sells a part interest in his business to another, the co-partnership should apply for a new on-sale 3.2 beer license. OAG November 9, 1950 (217-B-6).

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Prior to the effective date of Laws 1953, Chapter 346, there was no statutory provision for the refund to the owner of a whole non-intoxicating malt liquor license formerly issued by a municipality under the provisions of section 340.02. OAG July 7, 1953 (217-B-6).

The power to issue a license involves the power to revoke or suspend it. A license is not a right but a privilege. A license once granted should not be revoked without cause but where it appears that the original issuance of the license violated the law, the board has the power to suspend the license pending the hearing and to set a time and place for considering a question of revocation, notice being given to the licensee. OAG April 7, 1949 (217-B-9).

Draft beer cannot be placed in containers brought in by customers since the off sale non-intoxicating malt liquor license authorizes sale only in original packages. OAG April 29, 1947 (217-D).

An off sale 3.2 beer dealer may sell beer by the bottle. OAG Nov. 1, 1948 (217-D).

The lessee and not the lessor is the "proprietor" to whom an on-sale liquor license may be granted. OAG April 10, 1951 (217-D-5).

An on sale license may not be issued to a county fair association for the sale of 3.2 beer at the fair grounds unless the fair association is conducting a restaurant. OAG June 10, 1948 (217-F-1).

The licensing ordinance for the sale of non-intoxicating malt liquor at places of amusement may provide that the sale be restricted to certain particular areas therein, and the hours of sale may be restricted to the time when the place of amusement is open. OAG March 19, 1953 (217-F-1).

A club is not restricted to sell 3.2 beer to members only as in the case of intoxicating liquors. OAG May 16, 1947 (217-F-2).

A license issued by the county board authorizing the sale of 3.2 beer on the first floor of the club house of a golf club does not extend to selling beer on the club premises outside the club house, except by express license by the board. OAG July 31, 1947 (217-F-2).

An on sale license may be issued to a bona fide club for the sale of 3.2 beer at a baseball park. OAG June 10, 1948 (217-F-2).

An on sale license for the sale of 3.2 beer may not be granted to a person occupying premises used solely for a public dance hall. OAG June 15, 1948 (217-F-2).

Wholesalers of non-intoxicating malt liquors are licensed by the liquor control commissioner under the provisions of sections 340.01 to 340.407 and are required to obtain municipal licenses. OAG March 14, 1949 (217-H) (218-J-16).

Brewers and wholesalers of 3.2 beer may be licensed by a village for a fee of \$10 per annum. OAG April 28, 1949 (217-H).

Under the provisions of the cash beer law, Laws 1949, Chapter 475, coded as sections 340.02, 340.405, the wholesaler, brewer, or dealer who sells and delivers cases of bottles of beer to a retail dealer must collect in cash both for the beer and the containers. But the cash payment may be made in money or by the return of empty cases and bottles. Under the provisions of section 645.27, the law does not apply to municipalities operating a municipal liquor store. Purchasers may maintain a deposit from which the payments may be taken. The law applies to railroad companies. OAG May 5, 1949 (217-H).

Under the provisions of Laws 1949, Chapter 475, a manufacturer or a wholesaler of 3.2 beer is prohibited from holding a retail on sale beer license. OAG July 14, 1949 (217-H).

A wholesaler of 3.2 beer cannot have any interest in an off sale 3.2 beer license. OAG July 21, 1949 (217-H), OAG Feb. 3, 1950 (217-H).

A manufacturer may sell 3.2 beer to on sale and off sale dealers and to consumers in quantities of not less than two gallons. Holders of a wholesale license may sell

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only to on sale and off sale dealers. A municipality may not by ordinance forbid the holder of a wholesale license from selling to off sale or on sale dealers. OAG Feb. 24, 1950 (217-H).

A wholesaler having a license from the municipality in which his place of business is located is not required to obtain a wholesale license to sell non-intoxicating malt liquors in other municipalities. OAG Aug. 15, 1950 (217-H).

A wholesale distributor of beer may not sell to his employees. OAG July 2, 1952 (217-H).

Municipalities are no longer authorized to issue wholesale non-intoxicating malt liquor licenses. Under the amendment of Laws 1953, Chapter 346, that duty now devolves upon the liquor control commissioner. OAG June 23, 1953 (217-H).

A grocery or a drug store licensed for the off sale of 3.2 beer may employ as a delivery clerk a person under 21 years of age. OAG April 14, 1953 (270-A-4).

### 340.021 NON-INTOXICATING LIQUORS; SALE, CLOSING HOURS

HISTORY. 1939 c 402 s 1; 1949 c 654 s 1.

Under the position taken by the supreme court in *State ex rel v Washburn*, 224 Minn., 269, 28 NW(2d) 652, the language used in M.S.A. 340.021 is the latest expression of the legislative will and 3.2 beer may not be sold off sale between the hours of one a.m. and seven a.m. on any day except Sunday and between the hours of 2 a.m. and 12 n. on Sunday. OAG July 15, 1948 (217-F).

The statute provides that there can be no sale of 3.2 beer made between the hours of 1:00 a.m. and 8:00 a.m. on any weekday, Monday through Saturday. A village ordinance must conform to the state law and cannot provide for a 7:00 a.m. opening. OAG Sept. 6, 1949 (217-F).

The provisions of sections 340.01 to 340.06 do not apply to non-intoxicating malt liquor containing less than one-half of one percent alcohol by volume. OAG Sept. 8, 1949 (217-F).

A village may by ordinance entirely prohibit the sale of non-intoxicating liquor on Sunday. OAG Dec. 29, 1949 (217-F).

3.2 beer may not be sold at either on sale or off sale during the hours prohibited, and this includes the hours between 1 a.m. and 12 o'clock noon on Sundays. OAG Dec. 18, 1951 (217-F).

Unless prohibited by ordinance, licensee for the sale of non-intoxicating malt liquor may stay open for other purposes such as furnishing food during the hours when the sale of non-intoxicating malt liquor is prohibited. OAG Dec. 11, 1952 (217-F).

The sale of non-intoxicating malt liquor is prohibited in villages on days when the town elections are held. OAG Feb. 15, 1951 (218-J-4).

The prohibition against the sale of intoxicating liquor found in section 340.14, subdivision 1, applies to both on and off sale liquor stores. Section 340.021 applies to non-intoxicating liquors and the law is practically the same as it is for intoxicating liquors. Neither section applies to school elections. Where a special election is held the prohibition only applies to the ward or district where the voting is being done. Where a township holds an election within a village, the prohibitions apply between the hours of 1:00 a.m. and 8:00 p.m. in the village where the election is being held. OAG May 24, 1951 (218-J-4).

A municipal liquor store must close on election day in a town where the balloting is done in the town hall located in the village. OAG March 27, 1953 (218-J-4).

A municipal liquor store is not required to remain open during all hours permitted to be open by the ordinance or state law. Shorter hours may be observed. OAG May 10, 1949 (218-J-8), OAG May 16, 1949 (218-R).

**340.022 MUNICIPALITIES NOT TO EXTEND CLOSING HOURS**

**HISTORY.** 1939 c 402 s 2; 1949 c 654 s 2.

The express delegation of the power to license, regulate, and restrict the hours of sale of non-intoxicating malt liquor includes, by implication, as necessary to the effective exercise of that power, the authority to require that the premises on which such sale is licensed must close completely during the hours in which such sales are forbidden.

A license to sell non-intoxicating malt liquor is in the nature of a privilege and, as such, subjects the licensee to the possibility of reasonable regulations, including restrictions on the use of the premises on which such sale is licensed.

A liquor regulation establishing a classification on the basis of the difference in police supervision between rural and urban areas is founded on reasonable grounds. *Cleveland v Rice County*, ..... M ....., 56 NW(2d) 641.

The village council may permit the sale of 3.2 beer on Sunday by amending an ordinance to the contrary. No vote of the electorate is required or permitted. OAG Oct. 28, 1948 (217-F).

A village may by ordinance prohibit entirely the sale of non-intoxicating liquor on Sunday. OAG Dec. 29, 1949 (217-F).

A political subdivision cannot authorize or permit the sale of non-intoxicating malt liquors at hours when such sale is prohibited by the provisions of sections 340.021 to 340.023. Such political subdivision may within the time the laws of the state permit such sale further limit the hours of sale of non-intoxicating liquor provided that such limited hours for sale shall apply to both non-intoxicating malt liquors and intoxicating liquors. OAG June 3, 1952 (217-F).

A municipal liquor store is not required to remain open during all the hours permitted to be open by the ordinance or state law. Shorter hours may be observed. OAG May 10, 1949 (218-J-8).

The village council has power to fix and direct the days and hours when the municipal liquor store may be kept open for business but cannot allow the store to keep open for longer hours or on days or at times when not permitted by state law. OAG May 7, 1947 (218-J-10).

**340.024 SHERIFF'S CONTINGENT FUND**

The sheriff may use money in his contingent fund with which to purchase forms used in licensing. OAG April 8, 1952 (390-A-10).

The sheriff must not expend more money than is provided for the purposes designated. OAG Feb. 18, 1953 (390-A-10).

**340.025 LICENSES, FEDERAL LIQUOR STAMPS**

Procedural due process relating to revocation of beer licenses for lack of federal retail liquor dealers special tax stamp. 32 MLR 306.

Section 340.025, which requires the revocation without notice and without a hearing of licenses to sell non-intoxicating beer if the licensee is or subsequently becomes the owner and holder of a federal retail liquor dealer's special tax stamp for the sale of intoxicating liquor unless he also has a state license to sell intoxicating liquor, does not place a burden upon the federal taxing power. Such license is not property in the sense that it cannot be revoked without notice. *Abeln v City of Shakopee*, 224 M 262, 28 NW(2d) 642.

The constitution does not deprive the states of their police power, which they may exercise for the protection of the public health, welfare, and morals. *Abelm v City of Shakopee*, 224 M 267, 28 NW(2d) 642.

Section 340.025 does not, as respects its validity create a presumption that persons having a retail liquor dealer's federal tax stamps but no state licenses to sell intoxicating liquors have violated the law. *Jung v City of Winona*, 71 F. Supp. 558.

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Under the charter of the city of Austin the granting of a beer license is by resolution of the city council, which must be submitted to the mayor for his approval and he has a right to veto the same. OAG Jan. 13, 1950 (217-B-1).

The county board may revoke a non-intoxicating malt liquor license if the licensee is the holder of a federal retail liquor dealer's special tax stamp. OAG March 24, 1947 (217-B-9).

Section 340.025 does not prohibit the issuance of a license under that section to an applicant whose federal retail liquor dealer's special tax authorization has expired. OAG June 28, 1951 (217-B-9).

### **340.026 LICENSEES, MISDEMEANOR TO HOLD FEDERAL LIQUOR STAMPS**

The county board may revoke a non-intoxicating malt liquor license if the licensee is the holder of a federal retail liquor dealer's special tax stamp. OAG March 24, 1947 (217-B-9).

### **340.03 MINORS; PURCHASE, CONSUMPTION, POSSESSION**

**HISTORY.** 1933 c 116 s 3; 1945 c 161 s 1; 1953 c 483 s 1.

Section 340.03 does not permit the sale or service of beer to a minor, even though married and accompanied by spouse, unless the spouse is the minor's legal guardian. Serving lunches to minors in premises licensed for the on sale of beer is not prohibited by state law. OAG April 6, 1950 (217-F-3).

An unaccompanied minor may not purchase beer for the use of or at the request of the parent. Purchase of beer by an unaccompanied minor is prohibited. OAG March 26, 1951 (217-F-3).

### **340.04 DURATION OF LICENSES**

Where a licensee holding a 3.2 license sells a part interest in the business to another, the new partner must procure a new license. OAG Nov. 9, 1950 (217-B-6).

A beer license may not be issued for a portion of a year for a pro-rate fee unless within the exceptions listed in section 340.04. OAG April 7, 1952 (217-B-7).

### **340.06 NON-INTOXICATING MALT LIQUORS EXCLUDED**

Malt liquor containing less than one half of one percent of alcohol by volume may be sold to minors. OAG April 9, 1947 (215-F-3).

The provisions of sections 340.01 to 340.06 do not apply to nonintoxicating liquor containing less than one half of one percent of alcohol by volume. OAG Sept. 8, 1949 (217-F).

## **LIQUOR CONTROL**

### **340.07 DEFINITIONS**

**HISTORY.** 1849 c 8 s 4; RS 1851 c 21 s 4; PS 1858 c 18 s 4; 1860 c 47 s 1; 1861 c 54 s 1; GS 1866 c 16 s 11; 1877 c 44 s 2; GS 1878 c 16 s 11; 1887 c 6 s 7; 1887 c 81 s 2; 1889 c 105 s 1; GS 1894 s 2000; RL 1905 s 1564; 1911 c 204 s 1-3; 1913 c 387 s 1; GS 1913 s 3131, 3143-3145, 3188; 1915 c 23 s 1; 1919 c 455 s 1; Ex1919 c 65 s 1; 1921 c 335 s 1; 1921 c 391 s 1; 1921 c 338 s 1; 1923 c 393 s 2; 1923 c 416 s 1; GS 1923 s 3200, 3229, 3238; 1925 c 221 s 2; MS 1927 s 3238-2; 1933 c 130 s 1; 1937 c 421 s 1; 1939 c 101 s 1; M Supp s 3200-21; 1947 c 342 s 1; 1951 c 286 s 1; 1953 c 147 s 1.

In connection with the manufacture and sale of intoxicating liquor the legislature possesses all legislative power not withheld or forbidden by the state or federal constitutions. Laws 1947, Chapter 528, Section 1, Clause (c), which attempts



to prevent manufacturers and wholesalers of intoxicating liquors, as defined in section 340.07, from manufacturing or selling wines, and which attempts to prevent manufacturers and wholesalers of wines containing not more than 24 percent of alcohol by volume from manufacturing or selling intoxicating liquors, is arbitrary and unreasonable and violative of the equal protections clauses of the state and federal constitutions, since it ignores a similar separation of retailers of the same products within the state. *Benz v Ericson*, 227 M 1, 34 NW(2d) 726.

Where two parties jointly engaged in the wholesale liquor business without obtaining a wholesale liquor dealer's license from the state and a basic wholesale liquor dealer's permit from the federal government, one such party may not recover from the other for damages claimed for breach of contract and for an accounting, although the party plaintiff possessed such a license and permit to engage in the wholesale liquor business for itself. *Minter Bros. v Hochman*, 231 M 156, 42 NW(2d) 563.

A petition for injunction against a place of business on the sole ground that beer is sold therein and with no allegation or complaint as to the conduct and manner of the operation of the business and with no allegation or contention as to the alcoholic content or intoxicating quality of the product being sold does not state a cause of action. *State v Bliss*, 185 P(2d) 221.

A municipality owning and operating an on sale and off sale exclusive liquor store is not required to file the bond required for private on sale and off sale liquor dealers. The owner and operator of an off sale and on sale exclusive store is not liable to a patron for harm self-inflicted by reason of having become so intoxicated that he did not know what he was doing, the liquor having been furnished him in violation of section 340.73 by the operator when the patron was obviously intoxicated. *Stabs v City of Tower*, 229 M 552, 40 NW(2d) 362.

Although a municipal liquor store is primarily a governmental agency for the discharge of a governmental function, the operation of such store is also an invasion of the proprietary field in that it involves what is ordinarily a profit-making enterprise. *Hahn v City of Ortonville*, ..... M ....., 57 NW(2d) 254.

On sale and off sale licenses may be granted to the same person at the same location. OAG June 10, 1947 (217-B-5).

Finders are entitled to possession and use of lost or abandoned intoxicating liquors. Sale of such liquor is not authorized by law. OAG Oct. 25, 1949 (218).

A municipal liquor store when authorized is established by ordinance or resolution and must conform to general statutory regulations governing the sale of liquor, including section 340.14. OAG Nov. 3, 1947 (218-C-2) (218-G-13).

3.2 beer may be sold by a club to persons other than members. OAG May 16, 1947 (217-F-2).

Motels are not hotels within the meaning of section 340.07, subdivision 4. A license for the sale of intoxicating liquor may be issued to a partnership. A license for the sale of intoxicating liquor in one municipality does not bar the licensee to sell non-intoxicating malt liquors in another municipality. OAG July 31, 1951 (218-G).

An exclusive liquor store may sell liquor, all forms of tobacco, non-intoxicating malt beverages at retail but must not sell anything else. OAG March 17, 1947 (218-G-6).

Under rules promulgated by the liquor control commissioner a licensed restaurant authorized to sell liquor may not have a bowling alley in combination with it. OAG Sept. 13, 1950 (218-G-6).

A village may establish an on sale and off sale liquor store. General revenue funds may be used to purchase a municipal store. OAG Oct. 31, 1947 (218-G-12) (218-R).

The council of the city of Wabasha has sole authority to determine whether or not the city shall operate a municipal liquor store. There is no provision in the

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law authorizing the submission of the question to the voters. OAG March 7, 1949 (218-G-13), OAG Oct. 16, 1950 (218-G-13).

At the expiration of two years after its incorporation a newly-incorporated village may establish a municipal liquor store or may issue private licenses. OAG April 30, 1951 (218-G-13).

Clubs are subject to regulation under the state liquor law. OAG April 9, 1947 (218-G-15).

The city council may license a club to sell intoxicating liquor provided the club has been operating for 20 years. OAG June 9, 1947 (218-G-15).

To be entitled to a liquor license a club must not only have been in existence for more than 20 years but it must have a restricted membership. It must not be merely a scheme and device for supplying liquor to casual customers even though they secure membership. OAG Aug. 2, 1947 (218-G-15), OAG Oct. 13, 1947 (218-G-15).

A club liquor license issued under section 340.11 can only be issued to a club, as defined by section 340.07, and at a license fee of \$100 per year. Off sale licenses may not be issued to clubs. OAG July 10, 1951 (218-G-15).

A club holding a retail on sale intoxicating liquor license may only sell such liquor by the glass. OAG Feb. 8, 1951 (218-J-1).

A municipal off sale liquor store may not sell liquor to a club licensee in the municipality. OAG Feb. 11, 1952 (218-J-10).

There are no restrictions upon the amount of spiritous liquor sold by wholesaler to any retailer, nor upon the amount of spiritous liquor that an off sale licensee may sell to anyone for consumption purposes. OAG Nov. 19, 1953 (218-J-16).

A fermented apple juice beverage containing in excess of 3.2 alcohol by weight is intoxicating liquor and is subject to the provisions of sections 340.07 to 340.40. OAG Sept. 12, 1951 (218-K).

Where a restaurant operated by a private proprietor and located on the same premises and connected by a door and a counter window with a municipal liquor store, the municipal liquor store may not sell liquor to be consumed at the tables in the restaurant. OAG March 8, 1949 (218-R).

A municipality operating a liquor store may not operate a check cashing service in conjunction therewith. OAG June 6, 1952 (218-R).

Where a municipal liquor store is housed in rented premises a new floor may be installed if needed. OAG Feb. 26, 1953 (218-R).

The village council may enter into a 10-year lease of a building for a municipal liquor store and the fact that the lease may run after a change in the personnel of the council is no objection to the proposed lease. OAG May 11, 1953 (218-R).

### 340.08 LIQUOR CONTROL COMMISSIONER

HISTORY. Ex1934 c 46 s 2; 1949 c 739 s 17; 1951 c 713 s 38.

### 340.09 OFFICE; ASSISTANTS

The business of selling intoxicating liquor at retail for use as a beverage is peculiarly subject not only to state but to local regulation. *Anderson v City of St. Paul*, 226 M 186, 32 NW(2d) 538.

Advertising specialties designed to advertise a municipal liquor store, may be purchased and distributed and paid for out of liquor store funds provided the matter is first submitted to and approved by the liquor control commissioner. OAG June 28, 1951 (218-R).

### 340.11 LICENSES

HISTORY. 1849 c 8 s 1, 3; 1851 c 7 s 1, 3, 11; RS 1851 c 20 s 1, 3, 11; 1852 c 8 s 1, 2, 8; 1855 c 48 s 1; 1858 c 74 s 1, 3; PS 1858 c 18 s 15, 17; 1866 c 40 s 1; GS 1866

c. 16 s 1; 1867 c 103 s 1; 1870 c 32 s 1; 1875 c 112 s 1; 1876 c 80 s 1; GS 1878 c 16 s 1, 17; GS 1878 c 37 s 14; 1883 c 71 s 1; 1887 c 5 s 1-3; 1887 c 6 s 4; 1887 c 81 s 4; GS 1878 Vol 2 (1888 Supp) c 16 s 25, 26, 29-32, 37; 1889 c 21 s 1; 1893 c 167 s 1; 1893 c 179 s 1; 1893 c 189 s 1; GS 1894 s 1990, 2017, 2018, 2021-2024, 2029, 3933; 1895 c 191; 1901 c 101 s 1; 1905 c 346 s 2; RL 1905 s 1519, 1521, 1522, 1527-1529, 1533, 1546; 1909 c 75 s 1-3; 1909 c 93 s 1; 1909 c 283 s 2; 1911 c 204 s 1-3; GS 1913 s 3109, 3113, 3114, 3120, 3122-3125, 3127, 3128, 3138, 3143-3145, 3165; 1921 c 338 s 1; GS 1923 s 3235; 1933 c 115 s 2; Ex1934 c 46 s 5; 1935 c 303; 1937 c 227; 1937 c 387; 1937 c 478; Ex1937 c 74 s 1; 1939 c 154 s 1; M SUPP s 3200-25; 1941 c 4; 1941 c 34, 359, 485; 1943 c 501 s 1; 1943 c 599 s 1; 1945 c 8 s 1; c 162 s 1; c 227 s 1; c 247 s 1; c 417 s 1; c 482 s 1; 1947 c 223 s 1; 1947 c 528 s 1; 1949 c 265 s 1; 1949 c 626 s 1; 1951 c 250 s 1; 1953 c 86 s 1; 1953 c 356 s 1; 1953 c 442 s 1; 1953 c 610 s 1; 1953 c 695 s 1-3.

Identification of "interpretative rules" under the Administrative Procedure Act as applied to alcoholic products. 36 MLR 520.

The business of selling intoxicating liquor at retail for use as a beverage is peculiarly subject not only to national and state but to local regulation. *Anderson v City of St. Paul*, 226 M 185, 32 NW(2d) 538.

No one can acquire a vested right, when once licensed, to continue in a business, trade, or occupation which is subject to legislative control and regulation under the police power of the state. A license confers upon the licensee the right to engage in the licensed business only for the term specified in the license. A prior expired license confers no rights upon the licensee named therein, except in certain cases where by statute it entitles him to a renewal upon compliance with certain conditions. There is nothing in the liquor laws of this state upon which the right to renewal of a license to sell intoxicating liquors can be premised. Before it may be considered issued, the granting of an on sale liquor license requires the actual signing of the written or printed instrument in due form by the mayor and city recorder, with the licensee's name and other data inserted therein, and a delivery of the same to the licensee. *Paron v City of Shakopee*, 226 M 222, 32 NW(2d) 604.

The distinction between an occupation tax upon a business and a police power license fee is that the former is exacted by reason of the fact that the business is carried on and the latter is exacted as a condition precedent to the right or privilege of carrying it on; and a tax on the operation of off-sale liquor stores imposed by St. Paul city ordinance, pursuant to power conferred by its city charter, is an occupation tax and not a license fee within the statute prescribing a maximum fee for an off sale license. *Ramaley v City of St. Paul*, 226 M 406, 33 NW(2d) 19.

In connection with the manufacture and sale of intoxicating liquor the legislature possesses all legislative power not withheld or forbidden by the terms of the state or federal constitutions. Laws 1947, Chapter 528, Section 1, Clause (c), which attempts to prevent manufacturers and wholesalers of intoxicating liquors, as defined by MSA, section 340.07, from manufacturing or selling wines, and which attempts to prevent manufacturers and wholesalers of wines containing not more than 24 percent alcohol by volume from manufacturing or selling intoxicating liquors, is arbitrary and unreasonable and violative of the equal protection clauses of the state and federal constitutions, since it ignores a similar separation of retailers of the same products within the state. *Benz v Ericson*, 227 M 1, 34 NW(2d) 726.

When, pending an appeal, an event occurs which renders it impossible to grant any relief or which makes a decision unnecessary, the appeal will be dismissed. *Mid-West Wine Co. v Ericson*, 227 M 24, 34 NW(2d) 738.

Laws 1937, Chapter 387, is unconstitutional as special legislation, and is in violation of Minnesota Constitution, Article IV, Section 33. It provides that in cities of the fourth class situated in any county having not less than 100 nor more than 110 full and fractional townships and having a population of not less than 13,000 nor more than 15,000, the number of one sale licenses shall be determined by the governing body thereof and where such city while operating a municipal liquor store at off sale only, on sale licenses may be granted to hotels, clubs, restaurants, and exclusive liquor stores. *State ex rel v Kelley*, 235 M 350, 50 NW(2d) 703.

Where two parties jointly engaged in the wholesale liquor business without obtaining a wholesale liquor dealer's license from the state and a basic wholesale

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liquor dealer's permit from the federal government, one such party may not recover from the other for damages claimed for breach of contract and for an accounting, although the party plaintiff possessed such license and permit to engage in the wholesale liquor business for itself. *Minter Bros. v Hochman*, 231 M 156, 42 NW(2d) 563.

A city councilman employed as a bartender should not vote upon the granting of a liquor license to the place where he is employed. OAG June 3, 1949 (90-E-4).

An alderman of a city fourth class cannot be granted a license to sell intoxicating liquor because the giving of a bond as required by law or depositing cash in lieu thereof would constitute a contract with the city, which is prohibited. OAG June 30, 1949 (90-E-4).

A bartender in an on sale liquor store owned by his wife may qualify as village mayor. OAG Jan. 20, 1950 (90-E-4).

A liquor license and bond remain in effect even though the licensee later becomes mayor or councilman. The licensee will, however, become ineligible for a renewal of his license if he still holds office. OAG Aug. 28, 1950 (90-E-4).

The number of retail liquor licenses in a city of the fourth class is limited to five. Where the city council attempted to issue three additional licenses, the issuance of each was illegal, and license fees paid by those to whom the three void licenses were issued must be refunded. OAG Aug. 13, 1948 (218-G).

A license is issued to a partnership rather than in the name of the individual members thereof. OAG July 31, 1951 (218-G).

A license for the sale of intoxicating liquor may be issued to a corporation. OAG Jan. 14, 1952 (218-G).

A city council must exercise its discretion in granting a license. An ordinance setting up any other method is illegal. OAG Feb. 20, 1948 (218-G-1).

All off sale intoxicating liquor licensees have the right to dispense all kinds of intoxicating liquors for consumption off the premises. The ordinance makes no discrimination between licensees and does not authorize the council to do so. The council, in granting such a license, cannot restrict the licensee, even if he consents to the limitation, to restrict his sales to high point beer. OAG Nov. 7, 1947 (218-G-5).

Under section 340.11, subdivision 11, in a village with 1,068 inhabitants, the council may determine the number of off sale intoxicating liquor licenses to be issued. OAG May 7, 1948 (218-G-5).

An application for an off sale license must be considered upon its merits and the applicant cannot be required to apply for and take an on sale license as a condition to receiving an off sale license. OAG Dec. 6, 1949 (218-G-5).

The number of off sale licenses in a village is determined by the council. There is no limit to the number that may be issued, but they may be issued only to drug stores and exclusive liquor stores. OAG Jan. 4, 1950 (218-G-5).

An off sale license may not be issued to an on sale liquor store in a city of third class. OAG Jan. 19, 1950 (218-G-5).

There is no provision in the Minnesota Statutes relating to the licensing of the sale of liquor which terminates a license by reason of a change in the population of the municipality provided that the license was originally validly issued. In the event that a fourth class city becomes a third class city, the validity of the licenses issued prior thereto would be in no way affected, but thereafter no on sale licenses may be issued to an off sale license holder and no off sale license may be issued to an on sale license holder. OAG June 8, 1950 (218-G-5).

The village of St. Louis Park may issue an on sale liquor license under section 340.11, subdivision 10, and under section 340.13, subdivision 1, it may issue an off sale license to the applicant having such on sale license. Under section 340.41 the council may permit such licensee to sell food. OAG Nov. 13, 1951 (218-G-5).

There is no statutory authority for basing the fees for off sale licenses on a percentage of the gross or net receipts. OAG June 4, 1953 (218-G-5).

A village council may amend a license ordinance by increasing the amount of the license fee and make same retroactive to the beginning of the license year where licensees have all voluntarily paid the license at the increased rate. An ordinance could only be amended by another ordinance. A licensing ordinance may be amended so as to change the date of the license year. OAG Feb. 15, 1949 (218-G-6), OAG April 18, 1949 (218-G-6).

The village of Crystal is not entitled to issue more than three on sale licenses until a certified copy of the 1950 census is filed in the office of the secretary of state and discloses the right to an increase in the number of licenses. OAG Nov. 1, 1949 (218-G-6).

The village of Crosby may issue four on sale licenses but the same man cannot have two licenses. A hotel keeper who already has an on sale license for an exclusive liquor store cannot have another on sale license for a hotel. OAG Feb. 20, 1950 (218-G-6).

An on sale liquor license may not be issued in a village to an establishment that serves food, except it be a hotel or a club. OAG May 25, 1950 (219-G-6).

On sale intoxicating liquor retail licenses may be issued to restaurants in cities of the third class. A licensed restaurant may have a bowling alley. The dance hall law prohibits the issuance of a dance hall permit for a place having direct or indirect connection with a place where intoxicating liquor is sold. OAG July 21, 1950 (802-A-17) (218-G-6).

A municipal ordinance may provide that a license fee may be paid in installments. OAG April 21, 1951 (218-G-6).

A municipality becoming a city of the second class under the 1950 census, certified on July 30, 1951, may issue up to 15 on sale intoxicating liquor licenses. OAG Oct. 3, 1951 (218-G-6).

An ordinance providing for the renewal of any intoxicating liquor license "unless there is justifiable reason for refusing the same" is not enforceable. OAG April 28, 1953 (218-G-6).

One of the regulations of the liquor control commissioner provides that the location of business of a retail liquor licensee may be changed subject to the approval of the municipal council and the commissioner in cases of off sale licenses. Under the provisions of section 15.042, subdivision 3, the above quoted regulation has the force and effect of law. The provisions of section 340.57 do not change or modify the validity of the above quoted regulation. Upon proper application being made by a dealer in Minneapolis, the commissioner may exercise his sound discretion as to whether or not the motion should be granted. The action of the commissioner must not be arbitrary or unreasonable. OAG May 5, 1950 (218-G-10).

A corporation holding a wholesaler's license, may operate from more than one location. Only one corporation may operate under a license. OAG Jan. 9, 1948 (218-G-12).

Each separate corporation engaged in wholesaling liquors must have a separate license. One corporation cannot have two licenses. Where two licenses are issued to one corporation it may operate under the last expiring license until it expires. OAG Jan. 9, 1948 (218-G-12).

A municipal liquor store may be established in a village where no local option election has been held but which is located in a wet county by resolution or ordinance of the village council. If an election were held in the village on the precise question of establishing a municipal liquor store it would be simply an advisory vote not binding upon the council. OAG Nov. 3, 1947 (218-G-13).

A city of the first class having authority to license for sale of intoxicating liquor may cease the issuance of private license and establish its own municipal liquor store. The city council has the authority to adopt an ordinance providing for

the establishment of a municipal on sale liquor store; but if the city charter contains a provision for initiative and referendum and if the referendum petition is signed the matter must be submitted to the voters. OAG Nov. 20, 1947 (218-G-13).

Under section 340.11, subdivision 10, a village ordinance providing for a municipal off sale liquor store may be amended to permit the on sale of liquor without submitting the question to a vote of the people. OAG Oct. 15, 1948 (218-G-13).

Private licenses may not be issued in a municipality which has established a municipal liquor store. The law does not limit the number of liquor stores which may be established in a municipality authorized to issue such licenses. OAG April 28, 1950 (218-G-13).

A village may establish a municipal liquor store in which may be either an on sale or an off sale store or both. If the village establishes a municipal liquor store, it cannot issue any private licenses except club licenses. OAG Oct. 19, 1950 (218-G-13) (218-G-15).

A newly incorporated village may establish a liquor store or may issue private liquor licenses after the expiration of two years from the date of incorporation. OAG March 30, 1951 (218-G-13), OAG April 30, 1951 (218-G-13).

A license for an exclusive liquor store may be granted to one who operates a restaurant in the same building, provided the exclusive liquor store is completely partitioned off from the restaurant. OAG Aug. 16, 1951 (218-G-13).

The licensing of private dealers to sell intoxicating liquor does not prevent the licensing of private clubs, even though the full number of licenses permitted has been used by the private dealers. OAG Aug. 6, 1947 (218-G-15).

Under the provisions of section 340.11, subdivision 6, a club license may in the discretion of the governing body of the municipality, be issued in a city having a municipal liquor store; by complying with the following conditions: (1) conformance with existing ordinances; (2) the club must be incorporated for purposes prescribed by statute; (3) it must have 50 members; (4) for more than a year it must have owned or leased, and occupied a building as defined by law; (5) members, officers, agents or employees may not profit except by wage fixed annually by the club; (6) must have been in existence 20 years, and (7) the club must have a restricted membership, and the license must not be a mere device for selling liquor. OAG Jan. 20, 1948 (218-G-15).

There is no provision requiring that club licenses issued pursuant to section 340.11, subdivision 6, be approved by the liquor control commissioner. OAG Feb. 6, 1948 (218-G-15).

There is no provision for issuing a club license for a portion of a year nor is there a provision for pro-rating the license fee. OAG April 22, 1948 (218-G-15).

A club intoxicating liquor license may be issued in a village even where there is a municipal store. OAG Sept. 22, 1948 (218-G-15).

An ordinance providing that no liquor can be sold at retail except by a municipal dispensary must be amended before a club license can be granted. OAG Aug. 12, 1949 (218-G-15).

No club license can be issued in the village of Wells located in a dry county which voted only to permit the sale of intoxicating liquor in municipal stores. OAG Sept. 9, 1949 (218-G-15).

An on sale license may be issued to an incorporated club whose secretary is a minor. OAG May 26, 1950 (218-G-15).

A village may not license the on sale of intoxicating liquor at a place located outside the village limits. Responsibility for enforcing the law with respect to unlicensed sale of intoxicating liquor rests upon the sheriff and the county attorney. OAG April 3, 1951 (218-G-15).

Where the real property of a private golf club lay partly within the village limits and the village had issued a liquor license to the club while the clubhouse

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was within the village, the village lost all licensing authority when the clubhouse was moved outside the village limits. OAG April 5, 1951 (218-G-15).

A veterans' organization, a club under the provisions of section 340.07, subdivision 7, which has been in existence for 20 years, with more than 20 members, and has owned or leased a building for more than one year, is eligible for a restricted on sale liquor license under section 340.11, subdivision 6. OAG July 10, 1951 (218-G-15).

Irrespective of the period of existence of its parent organization, a local club must have been in existence for at least 20 years before it is eligible for an intoxicating liquor license. OAG Aug. 7, 1951 (218-G-15).

Where an American Legion Club for more than 20 years occupied club rooms in the basement of the Pipestone County Court House four nights each month, such arrangement is not sufficient to qualify as a club authorized to obtain an on sale liquor license under the provisions of section 340.11, subdivision 6. OAG Nov. 29, 1952 (218-G-15).

A bartender employed in a private club would be criminally liable for selling intoxicating liquor without a license. OAG Feb. 6, 1951 (218-J-1).

A club license does not authorize the sale of liquor to club guests. Subdivision 6 provides that the sale of intoxicating liquor is to members only. OAG Oct. 27, 1953 (218-J-1).

A municipal off sale liquor store may not sell liquor to a club licensee in the municipality. OAG Feb. 11, 1952 (218-J-10).

A village may buy a building for a municipal liquor store on contract, provided that the deferred payments are to be made only out of the profits of the village municipal liquor store. Unneeded space in such building may be rented during a period not needed for municipal purposes. OAG July 13, 1948 (218-R)

The municipal liquor store in Bemidji may not hire musicians or provide other live entertainment. OAG April 30, 1951 (218-R).

A city of the fourth class may buy a building for a municipal liquor store on a contract, provided that the deferred payments are made only out of the profits of the municipal liquor store. OAG Dec. 20, 1951 (218-R).

A municipality operating a liquor store may not operate a check-cashing service in conjunction therewith. OAG June 6, 1952 (218-R).

A municipality may not contract to pay rent for a municipal liquor store with a share of the gross receipts even though a maximum and a minimum rental is provided. OAG March 31, 1953 (218-R).

The village council may enter into a 10-year lease of a building for a municipal liquor store and the fact that the lease may run after a change in council personnel is no objection to the proposed lease. OAG May 11, 1953 (218-R).

A newly-incorporated village may not operate a municipal liquor store or bar until the expiration of two years after the date of the incorporation even though it was incorporated prior to the enactment of Laws 1953, Chapter 356. OAG June 18, 1953 (218-R).

The superintendent of licenses, weights, and measures in Minneapolis must permit the examination, copying, and photographing of records relating to liquor licenses in his office. These records are public records. OAG Nov. 30, 1950 (851-I).

## 340.112 LICENSE FEE, REFUNDMENT

Where licensed money was voluntarily paid and a license to sell non-intoxicating malt liquor issued, refund of the license fee cannot be made simply on the ground that the licensee did not start business. OAG Nov. 12, 1947 (217-B-2).

The money paid for a beer license cannot be refunded on the ground that the licensee lost his lease on the premises. OAG Sept. 9, 1949 (217-B-6).

The number of retail liquor licenses in a city of the fourth class is limited to five. Where a city council attempted to issue three additional licenses, the issuance of each was illegal and the fees paid by those to whom the three void licenses were issued must be refunded. OAG Aug. 13, 1948 (218-G).

License fees under section 340.112 may be refunded when the business is transferred because of illness. OAG June 12, 1952 (218-G-10).

A licensee is not entitled to a refund of his fee or any part thereof if he suspends business because of lack of patronage. OAG April 7, 1953 (218-G-14).

### 340.12 APPLICATION FOR LICENSE

A municipality owning and operating an on sale and off sale exclusive liquor store is not required to file the bond required by private on sale and off sale liquor dealers. The owner and operator of an off and on sale exclusive liquor store is not liable to a patron for harm self-inflicted as a consequence of having become so intoxicated that he did not know what he was doing, the liquor having been furnished to him in violation of section 340.73 by the operator when the patron was obviously intoxicated. *Stabs v City of Tower*, 229 M 553, 40 NW(2d) 362.

The license and bond required of wholesale liquor dealers is for the purpose of regulation and not for revenue. *Minter Bros. v Hochman*, 231 M 156, 42 NW(2d) 562.

Both at common law and under section 340.95 a minor patron of a retail liquor dealer has no cause of action against the seller for damages sustained as the result of his consumption of liquor illegally sold to him. *Cavin v Smith*, 228 M 322, 37 NW(2d) 368.

The operation of a municipal liquor store is a governmental activity and it is unreasonable to assume that the legislature did not intend that the municipality license itself and provide a bond, as required of private liquor dealers; but this fact does not operate to prevent an assumption that the operation of the store by the municipality is an invasion of the proprietary field. *Hahn v City of Ortonville*, ..... M ....., 57 NW(2d) 254.

The principals and sureties of bonds issued under section 340.12 are estopped from denying the validity thereof even though the issue was in conflict with the provisions of section 471.87. OAG July 25, 1952 (218-L).

### 340.13 REVOCATION OF LICENSES

**HISTORY.** 1852 c 8 s 7; 1855 c 48 s 6; 1858 c 74 s 5; PS 1858 c 18 s 19; GS 1866 c 16 s 3, 12; 1872 c 61 s 2; GS 1878 c 16 s 3, 12; 1887 c 5 s 3; 1887 c 81 s 3, 4; GS 1878 Vol 2 (1888 Supp) c 16 s 28, 32; 1893 c 189 s 1; GS 1894 s 1992, 2001, 2020, 2024; 1897 c 154 s 1; 1903 c 265 s 1; 1905 c 18 s 14-16; RL 1905 s 1536-1538, 1540; 1909 c 283 s 3; 1913 c 109 s 1; GS 1913 s 3149-3152, 3154, 3155; Ex1934 c 46 s 7; 1935 c 306 s 1; M Supp s 3200-27; 1943 c 501 s 3; 1953 c 66 s 1; 1953 c 669 s 1.

Section 340.13 declares that no license for an exclusive liquor store may be issued in any municipality maintaining an exclusive liquor store. *Stabs v City of Tower*, 229 M 552, 40 NW(2d) 362.

Section 340.13 vests power in an issuing authority to revoke a license. Section 340.19 requires that an intoxicating liquor license shall be immediately revoked upon a wilful violation of the license. Section 340.19 is mandatory and controlling in case of a wilful violation. In case of a non-wilful violation of the statutes revocation is not mandatory. The issuing authority must determine whether a violation is wilful or not. OAG Nov. 6, 1947 (218-B-14).

There is no statutory provision prohibiting the issuance of an intoxicating liquor license to a nonresident of the state. OAG May 22, 1952 (218-G).

Even though a person convicted of a felony has been granted a final discharge by the board of parole and restored to civil rights by the governor, such person



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is not eligible and may not be granted an on sale license for the sale of intoxicating liquors. OAG Nov. 23, 1948 (218-G).

An off sale license may not be issued to an on sale liquor store in a city of the third class. OAG Jan. 19, 1950 (218-G-5).

The validity of a liquor license issued by one municipality is not affected by issuance of liquor license to the same individual by another municipality. OAG Jan. 19, 1951 (218-G-6).

Where a village ordinance prohibits the transfer of intoxicating liquor licenses, a licensee who sells his business is not entitled to a pro rata refund. OAG Dec. 18, 1951 (218-G-10).

Laws 1947, Chapter 586, providing for the revocation of licenses where gambling devices therein defined are found in the possession of any licensee, did not repeal any of the provisions of the other sections of the statutes relating to gambling. All such sections are still in effect. The legislative intention in enacting chapter 586 was to furnish an additional and more effectual method of law enforcement by passing an act which clearly provides for the mandatory revocation of licenses if any of the gambling devices defined therein should be in licensed premises. In the instant case the possessor of the pinball machine as therein described is a violator of section 614.06, regardless of any interpretation of the definition of a gambling device found in Laws 1947, Chapter 586. OAG March 16, 1950 (733-D).

## 340.14 REGULATIONS

**HISTORY.** 1849 c 8 s 2; 1851 c 7 s 5; RS 1851 c 20 s 5; 1858 c 74 s 5; PS 1858 c 18 s 19; 1861 c 54 s 1; 1866 c 40 s 1; GS 1866 c 16 s 1, 10; 1872 c 61 s 2; 1875 c 112 s 1; 1877 c 44 s 1; 1878 c 75 s 1; GS 1878 c 16 s 1, 10; 1887 c 81 s 1, 4; GS 1878 Vol 2 (1888 Supp) c 16 s 29; 1889 c 21 s 1; 1889 c 87 s 1; 1893 c 167 s 1; GS 1894 s 1990, 1999, 2006, 2008, 2012, 2021, 3923; 1895 c 90 s 1; 1895 c 191 s 1; 1903 c 240 s 1; RL 1905 s 1532, 1533; 1911 c 204 s 1; GS 1913 s 3141, 3142; Ex1934 c 46 s 8; 1939 c 101 s 2; 1939 c 429 s 1; M Supp s 3200-28; 1941 c 415, 503; 1945 c 326 s 1; 1949 c 654 s 3.

The legislature has power to regulate sale of intoxicating liquor. *Paron v City of Shakopee*, 226 M 222, 32 NW(2d) 603.

In a prosecution for violation of a city ordinance forbidding the sale of intoxicating liquor to minors, the evidence of sales other than the one charged in the complaint was admissible to show a general scheme or plan to violate an ordinance. *City of St. Paul v Greene*, ..... M ....., 56 NW(2d) 423.

To sustain a prosecution for selling intoxicating liquor illegally, it is unnecessary to prove that the sale was made with the knowledge and consent of the owner of the business. It is sufficient if shown that the sale was made by an employee or servant. OAG Nov. 6, 1947 (218-B-14).

A municipal liquor store in an eligible municipality must be established by either an ordinance or resolution. Such store when established is subject to the regulations contained in the general statutes governing the sale of liquor, and particularly section 340.14. OAG Nov. 3, 1947 (218-C-7) (218-G-13).

The front wall of an on sale liquor store may be constructed of glass blocks that will admit light but will not be transparent. The law prohibits opaque windows but a glass wall is not a window, although it may admit light. The law does not prohibit translucent walls. There is no law requiring that the wall shall be transparent. OAG May 23, 1949 (218-E).

The serving of liquids for the purpose of mixing intoxicating liquors, is forbidden only between the hours of midnight and 8 a.m. OAG July 29, 1947 (218-F).

Except for a state normal school, the Minnesota statutes do not prohibit sale of intoxicating liquor in a municipality within any specified distance from school or church therein. A number of municipalities have ordinances prohibiting the sale of intoxicating liquor within a designated distance from a schoolhouse or church. OAG May 15, 1952 (218-G-11-A).

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Breweries and wholesale dealers of intoxicating liquor may deliver intoxicating liquors to retailers in wholesale quantities on election day. OAG March 8, 1949 (218-J-4).

Where a special election is held in one ward only intoxicating liquor establishments and non-intoxicating malt liquor establishments must close in the ward in which the election is held, but need not close in other wards where there is no election. OAG July 21, 1949 (218-J-4).

The prohibition in section 340.14, subdivision 1, against the sale of intoxicating liquor on election day is not applicable to a school election. OAG June 20, 1950 (218-J-4).

The prohibition against the sale of intoxicating liquor found in section 340.14, subdivision 1, applies to both on and off sale liquor stores. Section 340.021 applies to non-intoxicating liquors and the law is practically the same as it is for intoxicating liquors. Neither section applies to school elections. Where a special election is held the prohibition only applies to the ward or district where the voting is being done. Where a township holds an election within a village, the prohibitions apply between the hours of 1:00 a.m. and 8:00 p.m. in the village where the election is being held. OAG May 24, 1951 (218-J-4).

A municipal liquor store must be closed on presidential primary election day. OAG Feb. 29, 1952 (218-J-4).

A village may close on Sunday, and for all purposes, any establishment licensed for the sale of intoxicating liquor. This probably includes clubs as well as stores. OAG July 30, 1953 (218-J-6).

A city council in the exercise of its police power may require that no intoxicating liquor licensee who operates a restaurant shall open before eight o'clock a.m. Section 340.14, subdivision 3, does not apply, as it was intended to prevent "spiking." An unlicensed person must not display or permit others to display liquor, but a licensed dealer may display but not sell liquor during prohibited hours. OAG Jan 15, 1948 (218-J-8).

Under Laws 1949, Chapter 654, any previously enacted ordinance restricting the hours of the sale of intoxicating and non-intoxicating liquors to less than those permitted in the state law remain in effect until amended. OAG May 3, 1949 (218-J-8).

The word "radius," as used in Laws 1949, Chapter 654, means "distance" and should be measured in a straight line to the nearest point in the boundary of the city. OAG May 18, 1949 (218-J-8).

The city of Stillwater is within the distance of 15 miles of a city of the first class and comes within the eight o'clock closing hours for off sale places for selling intoxicating liquor, except that on Saturday the store must close at 10:00 p.m. OAG June 3, 1949 (218-J-8).

In municipal as well as in other liquor stores under the provisions of section 340.14, subdivision 1, no on sale place of business shall be permitted to have swinging doors or opaque windows, and all sales shall be made in full view of the public. Clear windows in part and opaque in part would not be permitted. OAG April 10, 1950 (218-R).

A dice box available and intended to be used by proprietor's customers for the purpose of gambling among themselves is a gambling device under sections 340.14, 614.06, and 614.07. OAG July 14, 1947 (733).

Awarding to a player who makes a specified score on a pinball machine a chance to draw a number for a merchandise award is a "gambling device," OAG April 10, 1951 (733-D).

Playing cards for cigars, drinks or any other thing of value is gambling. Playing with the understanding that the loser treat is gambling. Playing cards for fun or entertainment is not gambling. OAG Jan. 26, 1948 (733-E).

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Bingo may not be played on premises licensed for the sale of intoxicating liquor or in any room adjoining such premises. OAG May 14, 1952 (733-G).

### 340.16 LICENSES, NOT IN CERTAIN MUNICIPALITIES; LOCAL REGULATIONS

**HISTORY.** Amended, 1949 c 354 s 1.

A county dry because in 1933 it voted for delegates "against repeal," may conduct a county wide election and vote on the proposition as to whether or not intoxicating liquor may be sold. OAG July 7, 1947 (218-C-2).

There is no statutory authorization for the adoption of an ordinance limiting to one the number of licenses issued to locations other than on the main street and providing that the one place must be owned in fee by the licensee and the building must not cost less than \$25,000 and the licensee must furnish police protection, such ordinance is of doubtful validity. OAG Nov. 20, 1947 (217-C).

#### 340.161 MUNICIPAL LIQUOR STORES

In an action on a fidelity bond executed to indemnify an employer against loss caused by the dishonesty or fraud of an employee, such as the operator of a liquor store, the burden of proof is on the plaintiff-employer to establish by a reasonable preponderance of the evidence the loss, and that such loss was caused by an act of dishonesty or fraud by an employee within the terms of the fidelity bond and during the time alleged in the complaint. *Village of Plummer v Anchor Casualty Co.*, ..... M ....., 61 NW(2d) 225.

In order that a city or village may cooperate with a school district under section 471.16 and operate joint recreational activities it is necessary that the school district be authorized by a vote of the people but that is not true as to the municipality. Profits realized by the city from the operation of the municipal liquor store and not required for the continued operation thereof may be transferred to the general revenue fund and used for any legitimate purpose for which the city is permitted by law to spend money. OAG Oct. 3, 1947 (59-B-11) (218-R).

A municipal liquor store may expend money for advertising but only in accordance with the rules of the liquor control commissioner which require the commissioner's approval of the advertising. OAG May 11, 1951 (217-B-5).

Where the district court, in an action contesting an election upon the question of granting licenses for the sale of liquor, orders village to pay the attorney's fees for the contesting parties, the village must either appeal the order or pay the judgment. The money must be paid out of the general revenue fund but the village has authority to transfer a like sum from the liquor store fund to the general fund for the purpose of making the payment. OAG May 31, 1951 (218-C-1).

If a village holds a municipal liquor store election it should occur on the same day as a regular village election. OAG Dec. 4, 1947 (218-G-13).

When a city of the fourth class votes dry, the right to operate a municipal liquor store expires when the final result of the election is determined. OAG April 6, 1948 (218-G-13).

An ordinance providing that no liquor can be sold at retail except by a municipal liquor dispensary must be amended before a club license can be granted. OAG Aug. 12, 1949 (218-G-15).

No criminal liability rests upon a village for violating the law in conducting a municipal liquor store; but agents of the village may be held criminally liable for such violation. OAG Feb. 10, 1949 (218-K).

The sale of intoxicating liquor for beverage purposes in Redwood County is not restricted to municipal liquor stores. It is a matter entirely within the discretion of the council of the village of Clements as to whether it should establish a municipal liquor store therein or whether it should authorize the sale of liquor in the village by private licensees. There is no statutory provision authorizing the sub-

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mission of such a question to the electorate. If the village council should decide to discontinue the present municipal liquor store and issue licenses for the sale of intoxicating liquor it may enact an ordinance to that effect. OAG Nov. 18, 1952 (218-R).

Members of the village council may not be paid compensation for looking after the affairs of the municipal liquor store. Liquor store funds may be used for improving the hall. Profits of the liquor store may be used for sewers and water mains but before being irrevocably pledged for such purpose there must be an election. OAG Jan. 17, 1947 (218-R).

A village has power to purchase a building on a conditional contract for use as a municipal liquor store; payment to be made only out of the profits arising from the operation of the store. OAG Dec. 8, 1947 (218-R).

Where a village desires to purchase material or equipment for a municipal liquor store, if the cost exceeds \$100, the village must advertise for bids. Section 412.21 does not apply to the hiring of a manager for the municipal liquor store or assistance in the operation of the store. OAG April 8, 1948 (218-R).

A village ordinance or resolution relating to the financing of a municipal liquor store may provide that in case of a discontinuance of the store all merchandise and fixtures owned by the village in connection with the operation of the store shall constitute a fund to be used only for the payment of the obligations of the village in connection with the store. OAG May 24, 1948 (218-R).

Revenue warrants payable solely from profits of a municipal liquor store may not be issued by a village without an election where the purpose of the issue is to pay the cost of improving the public streets. OAG Sept. 22, 1948 (218-R).

A village council may devote excess revenues in the liquor fund to the building of a sewer system. No election is necessary except to pledge all or part of such revenue for the payment of bonds or warrants issued for such purpose. OAG Nov. 19, 1948 (218-R).

A village clerk, if a member of the village council, cannot be compensated from the municipal liquor fund for keeping the books of the municipal liquor store. The village code, effective July 1, 1949, under Optional Plan "A" provides that the village clerk will not be a member of the village council after the expiration of his present term and in such event the employment prohibition above referred to would not apply. OAG March 31, 1949 (218-R), OAG April 14, 1949 (218-R).

A village may purchase a building for use as a liquor store on a contract for a deed or it may purchase the building with certificates of indebtedness or warrants payable out of profits of operation of the liquor store; but a village has no power to mortgage a building so purchased. OAG May 10, 1949 (218-R).

The manager of a municipal liquor store may also serve as village assessor. OAG Aug. 29, 1949 (218-R).

A village may use money accumulated in the municipal liquor store fund for the purchase of a building. It may pay out the money either from the general fund or it may transfer it back to the liquor fund and then use it. OAG Nov. 2, 1949 (218-R).

The power to establish a municipal liquor store in a city of the fourth class is conferred by statute upon the governing body of the city. The law does not prescribe the method of management. A city ordinance or charter provision for its operation after it is so established by the governing body under a commission appointed by the city council and given the control and management thereof by ordinance or charter provision is validated. OAG Nov. 15, 1949 (218-R).

The profits from the operation of a municipal liquor store may be transferred to the general revenue fund or used to augment any lawfully designated fund to make up a deficiency there existing. A surplus in the general revenue fund may be transferred to any other fund to make up a deficiency there existing. OAG March 1, 1950 (218-R).

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A municipal liquor store may purchase restaurant fixtures if necessary in order to lease premises for a municipal liquor store. A municipal liquor store may have an entrance to a hotel so as to permit use of the hotel rest rooms by its patrons. OAG July 31, 1951 (218-R).

Provided a municipal liquor store is partitioned off from the balance of the same building it may be in the same building with the jail and the council chambers. OAG July 31, 1951 (218-R), OAG Aug. 2, 1951 (218-R).

A municipal liquor store may have an entrance into a hotel. Liquor may not be purchased by the glass in a municipal liquor store for consumption in the hotel and food from the hotel may not be served in the municipal liquor store. OAG June 6, 1952 (218-R).

A municipality operating a liquor store may not operate a check cashing service in conjunction therewith. OAG June 6, 1952 (218-R).

A municipal liquor store is not authorized to extend credit or accept checks for liquor purposes. OAG Sept. 20, 1952 (218-R), OAG March 13, 1953 (218-R).

The profits of a municipal liquor store may not be pledged for payment of municipal obligations other than for sewer and water purposes. OAG April 9, 1953 (218-R).

The cash basis provisions of Minnesota Statutes, Chapter 275, do not apply to warrants or other forms of indebtedness to be paid solely out of revenue-producing facilities and not from general taxation. The village of Kinney could, therefor, finance the purchase of stock and fixtures of the present privately-owned liquor establishments by the issuance of warrants payable solely out of municipal liquor store revenue. OAG Oct. 15, 1953 (218-R).

Employees of a municipal liquor store are subject to the "no strike" provisions of Laws 1951, Chapter 146. OAG Jan. 14, 1952 (279-D).

A village constable may be employed in the municipal liquor store. OAG Dec. 9, 1947 (358-E-8).

Municipal liquor store profits may be pledged for the payment of the cost of constructing a water system in the village. OAG March 19, 1948 (476-A-4).

Where employees of a village liquor store sold liquor to minors who became intoxicated and committed substantial damage, there is no prohibition against the village making an advantageous settlement of an action brought to recover damages. OAG Sept. 3, 1948 (476-A-5).

## 340.19 REMOVAL OF OFFICERS; LICENSES REVOKED; BONDS FORFEITED; VIOLATIONS

**HISTORY.** Pen. Code s 398, 410, 411; 1849 c 8 s 1, 2, 5; 1851 c 7 s 6, 7; RS 1851 c 20 s 6, 7; 1852 c 8 s 4; 1855 c 48 s 5, 7; 1858 c 74 s 4, 6; PS 1858 c 18 s 18, 20; 1860 c 57 s 1; 1887 c 6 s 4; 1887 c 7 s 1; 1887 c 81 s 4; GS 1878 Vol 2 (1888 Supp) c 16 s 29, 37, 41; 1889 c 208 s 1, 2; 1893 c 167 s 1; 1893 c 179 s 1; GS 1894 s 2021, 2029, 2033; 1903 c 206 s 1; RL 1905 s 1519, 1530, 1531, 1550-1552; 1911 c 204 s 5; 1913 c 387 s 5; 1913 c 484 s 2; 1913 c 501 s 1; GS 1913 s 3109, 3135, 3137, 3139, 3140, 3147, 3169, 3170, 3171; 1919 c 455 s 24, 25; 1921 c 39 s 14, 15; 1921 c 335 s 5; GS 1923 s 3224, 3225, 3233; 1923 c 416 s 8; Ex1934 c 46 s 13; 1939 c 101 s 3; 1939 c 248 s 1; M Supp s 3200-33.

Where one section of the statute defines sale of intoxicating liquor without a license as a "gross misdemeanor" and the following section specifies that a violation of any of the provisions of the enactment as to sales is a "misdemeanor," the specific definition of the former section governs over the more general terms of the latter, especially in view of the fact that the specific definition was subsequently enacted, and that the sale without a license has been consistently construed by the attorney general as a gross misdemeanor. *City of St. Paul v Hall*, ..... M ....., 58 NW(2d) 761.

Section 340.19, subdivision 2, is mandatory and where the licensee wilfully violates any provision of sections 340.07 to 340.40 the issuing authority must revoke the

license while, if the violation be not wilful, revocation is not mandatory. OAG Nov. 6, 1947 (218-F) (218-G-14).

Where complaint charges wilful violation and conviction is of a wilful violation of a liquor law, revocation of the license is mandatory. Where the court records do not disclose that the conviction was a wilful violation, then the licensing authority should determine whether the violation was wilful. OAG Nov. 22, 1950 (218-G-14).

A bartender who sells intoxicating liquor for an incorporated club which has no license is guilty of selling intoxicating liquor without a license. OAG Feb. 6, 1951 (218-J-1).

Where no consideration is paid by players in a bingo game, the game is not a lottery and is not prohibited unless it is played for the purpose of injuring competitors and destroying competition, or if played in an establishment licensed for the sale of intoxicating liquor. OAG Nov. 15, 1951 (733-G).

## 340.20 LOCAL OPTION ELECTIONS IN VILLAGES

In a village a local option election can only be held at the time of the regular annual election and cannot be voted on at a special election. OAG Aug. 6, 1947 (218-E-3).

A local option election may be held in any village in any year in which the proper petition is filed within the required time, and upon the filing of a proper petition fifteen days before the annual village election, the village clerk is required to give notice of election upon the question. OAG Nov. 4, 1948 (218-C-3).

Voters may petition for the holding of an election for or against licensing for the sale of intoxicating liquors in a wet village situated in a wet county. OAG Nov. 20, 1948 (218-C-3).

A person filing a petition with the village recorder proposing an election to determine a question for or against the sale of intoxicating liquor has no right to withdraw the petition. Signers of the petition may withdraw therefrom, provided they do so before the recorder has taken official action on the petition. OAG Nov. 29, 1948 (218-C-3).

The filing of a proper petition within 15 days before the holding of a local option election is a jurisdictional precedent to the holding of such an election. OAG Dec. 21, 1950 (218-C-3).

In a local option election the ballot submitted to the voters in a county permitting sale of liquor through the establishment of a municipal liquor store should be "for licenses" and "against licenses." The question of the type of municipal liquor store to be established is entirely within the discretion of the village council. OAG July 8, 1953 (218-C-3) (218-R).

If there is a wet result at a local option election, a city or village may issue licenses or establish a municipal store. No municipality may issue a license if the result of the last local option election was dry, no matter how long ago. OAG Aug. 6, 1947 (218-E-3).

There is no authority for the establishment of a municipal liquor store in a dry county. OAG Dec. 15, 1948 (218-G-13).

The village of Ormsby is located on the county line between two counties, the main street of the village being the county line. Originally both counties were dry but recently one of the counties voted in favor of municipal liquor sales. At the last election the majority in the village voted against a license. Consequently, a municipal store cannot be established in the village until the situation shall be reversed at a subsequent local option election to be held pursuant to sections 340.20 and 340.21. If the result of the election is for a license it would then be permissible to establish a municipal store in the village of Crosby being in that part of the village located in the wet county. OAG Feb. 10, 1950 (218-G-13).

After a county option election on establishing municipal liquor stores, the municipalities voting for delegates against repeal or voting against licenses at any former

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election must have local option election before establishing a municipal liquor store. OAG Feb. 25, 1953 (218-G-13).

Where a village at its last election voted wet and thereafter the county voted dry and later on October 20, 1947, the county again voted wet, no election is necessary in the village, and the village council may establish a municipal liquor store, either on sale, or off sale, or both. The general revenue fund of the village may be used for the purpose of purchasing and establishing a liquor store. OAG Oct. 31, 1947 (218-R).

In a county having voted in favor of the sale of intoxicating liquor through the establishment of municipal stores, any village therein in which the vote at the last local option election therein was in favor of license may establish a municipal store without an election. If at the last local option election the village vote was not in favor of license, then it is necessary to hold an election pursuant to section 340.20 before a municipal store can be established. When properly authorized to establish a municipal store, the council in its discretion may establish an off sale store, or an on sale store, or both. OAG Oct. 26, 1949 (218-R).

### 340.21 RESULT OF ELECTION

There is no authority for the establishment of a municipal liquor store in a dry county. OAG Dec. 15, 1948 (218-G-13).

A municipal liquor store may be established in that portion of a village lying in a wet county, if a majority of the voters of the village favor a license by a vote taken. OAG Feb. 10, 1950 (218-G-13).

The city of Stillwater is within the distance of 15 miles of a city of the first class and comes within eight o'clock closing hours for off sale places for selling intoxicating liquor, except that on Saturday the store must close at 10:00 p.m. OAG June 3, 1949 (218-J-8).

### 340.22 LOCAL OPTION ELECTIONS IN CITIES FOURTH CLASS

Where, in a city of the fourth class, an election on local option was held in 1947, another election may be held in 1948 based on proper petition. Such petition is sufficient if signed by the required number of legal voters. Section 340.40 does not govern the form of a petition for a local option election in a city of the fourth class. Such election is held pursuant to section 340.22. OAG Dec. 11, 1947 (218-C-1).

An on sale municipal liquor store may be established in a city of the fourth class by following the provisions of the city charter regarding referendum petition, or if no petition be filed, then by a vote of the city council. OAG Nov. 20, 1947 (218-G-13).

An on sale municipal liquor store may be established in a city of fourth class by vote of the village council if a referendum petition is not filed or may be established by following the provisions of the city charter with reference to initiation of ordinances. OAG Nov. 20, 1947 (218-G-13).

When a city of the fourth class votes dry, the right to operate a municipal liquor store expires when the final result of the election is determined. OAG April 6, 1948 (218-G-13).

The term "the last city election" in section 340.22 refers to the last regular city election and not to any special election. OAG Nov. 13, 1951 (218-G-13).

Local option elections may be held in cities of the fourth class only at the time of regular city elections. OAG Dec. 4, 1951 (218-G-13).

### 340.23 BALLOTS; RESULTS OF VOTE; LIQUORS; SALE, PRESCRIPTIONS

Where in a dry city the result of a local option election is contested in the courts and it is not as yet determined that a majority of the votes cast were favorable to granting a license, a license should not be issued pending the court decision. OAG Oct. 1, 1947 (218-C-1).

If a city of the fourth class in which the opening of the municipal liquor store was anticipated, should vote dry at the next municipal election, the city's right to operate the store would expire when the result of the election was finally determined. OAG April 6, 1948 (218-G-13).

When a city of the fourth class votes dry, the right to operate a municipal liquor store expires when the final results of the election is determined. OAG April 6, 1948 (218-G-13).

**340.24 CHARTER AND ORDINANCE PROVISIONS; CONTINUANCE, SUSPENSION**

The liquor control commissioner has authority to promulgate a regulation requiring all dealers to submit an inventory of their stock of goods but does not have authority to require any dealer to close his place of business for the purpose of taking such inventory. OAG April 29, 1947 (218-K).

**340.245 MUNICIPAL LIQUOR STORE; ESTABLISHMENT, LIMITATION**

HISTORY. 1949 c 221 s 1.

In a county wide election on municipal liquor stores there should be a separate ballot box for the voters in the village of Warroad and a separate ballot box for voters living in the town of Warroad outside of the village limits, even though both elections are held at the same time and place. OAG Dec. 28, 1949 (218-C-2).

**340.25 LOCAL OPTION ELECTIONS IN COUNTIES**

In a city or village where streets are named and homes are numbered, a petitioner's name on a petition should be disregarded unless the street and number of his residence accompany the signature. OAG Aug. 21, 1947 (218-C-2).

The oath should be administered after the signing of the petition. OAG June 21, 1948 (218-C-2).

County-wide election may be held after the expiration of three years following the last previous election under sections 340.25 and 340.26. A petition may be circulated previous to the expiration of such three years, but petitioners must sign less than 90 days before the petition is presented to the county auditor. OAG Jan. 21, 1949 (218-C-2).

If a petition for a local option election is filed at any time prior to the general election to be held in November, 1952, the number of qualified voters required to sign the petition is at least 25 percent of the total number of votes cast in the county at the 1950 general election. OAG June 11, 1952 (218-C-2).

A petitioner who resides in a rural area must state the town of his residence in a petition under the provisions of section 340.25. OAG Jan. 30, 1953 (218-C-2).

The right of any of the petitioners for a county option election to withdraw their signature at any time before the petition is acted upon by the commission, is absolute. OAG March 7, 1953 (218-C-2).

The statutory provision that a petition for a local option election in counties may consist of separate petitions fastened together as one document, is directory and not mandatory and the fact that the papers are not fastened together does not render the election void. OAG April 25, 1947 (218-E-11).

The fact that the county voted favorably upon proposition (2) of section 340.25, permitting the sale of intoxicating liquor through the establishment of municipal liquor store in the county, in no way authorizes the issuance of a license to an individual permitting him to sell intoxicating liquor at retail. OAG Oct. 28, 1947 (218-G-13).

The city of Fergus Falls, which is in a class governed by section 340.16, having more than 600 inhabitants, may hold an election on the question of establishing therein a municipally-owned exclusive liquor store. In order to authorize said store a



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majority of all the ballots passed at such election upon such question shall be "for municipal liquor store." OAG March 17, 1949 (218-R).

### 340.26 SPECIAL ELECTION

A local option election may be held in any village in any year in which the proper petition is filed within the required time, and upon the filing of a proper petition fifteen days before the annual village election, the village clerk is required to give notice of election upon the question. OAG Nov. 4, 1948 (218-C-3).

County-wide election may be held after the expiration of three years following the last previous election under sections 340.25 and 340.26. A petition may be circulated previous to the expiration of such three years, but petitioners must sign less than 90 days before the petition is presented to the county auditor. OAG Jan. 21, 1949 (218-C-2).

### 340.30 BALLOTS

There is no rotation of the words "yes" or "no" on the ballot. The word "yes" must be placed first. OAG July 9, 1947 (218-E-2).

### 340.323 CERTIFICATION

HISTORY. 1951 c 416 s 1.

### 340.353 MUNICIPAL LIQUOR STORE; OPERATION, POPULATION CHANGE

HISTORY. 1949 c 124 s 1; 1951 c 286 s 2.

A village municipal liquor store may purchase and install a television set; but it may not use store funds for the purchase of advertising novelties to be given away. OAG Jan. 13, 1951 (218-R).

The effective date of the 1950 census was Jan. 1, 1951, and the city of Bemidji was required to hold an election as to whether to continue the operation of a municipal liquor store within one year after that date. OAG Nov. 28, 1951 (218-R).

### 340.354 DECLARATION OF POLICY

HISTORY. 1953 c 162 s 1

### 340.355 MUNICIPAL LIQUOR STORE; SUSPENSION OF OPERATION

HISTORY. 1953 c 162 s 2.

### 340.356 DISTRICT COURT; HEARING

HISTORY. 1953 c 162 s 3.

### 340.357 JUDGMENT OF SUSPENSION

HISTORY. 1953 c 162 s 4.

### 340.36 OFFENSES IN PROHIBITION TERRITORY; UNEXPIRED LICENSES; LIQUOR MANUFACTURED, SOLD, PRESCRIPTIONS BY PHYSICIANS

It is unlawful to store strong beer in a dry county, except such as is manufactured in the county. OAG Nov. 14, 1947 (218-O).

### 340.39 STATUTES, ORDINANCES; WHEN NOT OPERATIVE

Any prosecution for violation of a city ordinance forbidding the sale of intoxicating liquor to minors, evidence of sales other than the one charged in the complaint, was admissible where so related as to show a general scheme or plan to

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violate the ordinance. Violation of the city ordinance need not be proved beyond a reasonable doubt. *City of St. Paul v Greene*, ..... M ....., 56 NW(2d) 423.

### 340.40 ELECTION; PETITION, ORDER, NOTICE, CERTIFICATE

Where in a city of the fourth class an election on local option was held in 1947 another election may be held in 1948, based on a proper petition. This petition is sufficient if signed by the required number of legal voters. Section 340.40 does not govern the form of a petition for a local option election in a city of the fourth class. Such an election is held pursuant to section 340.22. OAG Dec. 11, 1947 (218-C-1).

### 340.401 DEFINITIONS

Although the Liquor Control Act of 1934, the Act of 1943, and the Civil Damage Act, were enacted at different times, the three acts are supplementary to one another and are integral parts of a unified plan for controlling the sale and consumption of intoxicating liquor. *Hahn v City of Ortonville*, ..... M ....., 57 NW(2d) 254.

### 340.402 LICENSES, FEES

Certain kinds of business may under certain circumstances become public nuisances such as hawking, peddling, and the sale of intoxicating liquors, and under police power they may be restricted by the imposition of a license fee much in excess of the cost of the license and the police supervision. *State v Labo's Direct Service*, 232 M 175, 44 NW(2d) 823.

### 340.403 BOND, LICENSE

Section 340.403 requires the denial of a license only to one convicted of a felony under the laws of the state; and the license issued to a corporation cannot be revoked because the president of the corporation, who was also the treasurer and controlling stockholder, was convicted of the crime of kidnapping under the federal laws, and had lost his citizenship. OAG Aug. 14, 1947 (218-G-14).

### 340.405 BREWERS, WHOLESALEERS; NOT TO BE RETAILERS

HISTORY. 1943 c 460 s 5; 1949 c 475 s 2.

Under the provisions of Laws 1949, Chapter 475, the wholesaler, brewer, or dealer who sells and delivers cases of bottles of beer to a retail dealer must collect in cash both for the beer and the containers. The cash payment may be made in money or by the return of empty cases and bottles. Under the provisions of section 645.27, the law does not apply to a municipality operating a municipal liquor store. Purchasers may maintain a deposit from which the payments may be taken. The law applies to railroad companies. OAG May 5, 1949 (217-H).

### 340.41 FOOD, TOBACCO, SOFT DRINKS; SALE IN LIQUOR STORES

HISTORY. 1937 c 393 s 1; 1953 c 665 s 1.

The village of St. Louis Park may issue an on sale liquor license under section 340.11, subdivision 10, and under section 340.13, subdivision 1, it may issue an off sale license to the applicant having such on sale license. Under section 340.41 the village council may permit such licensee to sell food. OAG Nov. 13, 1951 (218-G-5).

340.42, 340.43 Obsolete.

### 340.461 INTOXICATING LIQUOR CONTAINERS, LABELS

HISTORY. 1943 c 113 s 1-5.

Laws 1949, Chapter 642, Section 18, only increases the excise tax on intoxicating liquors. It does not increase the sale price of certification labels. OAG May 19, 1949 (218-K).

### EXCISE TAX

#### 340.47 EXCISE TAX

**HISTORY.** Amended, 1947 c 601 s 1; 1949 c 441 s 1; 1949 c 642 s 18.

Payments of increased tax on liquors should be made to the state treasurer before emergency stamps used for collecting the increased tax are delivered. The liquor control commissioner may by rule require all dealers to submit an inventory of goods on hand. The place of business need not be closed for the taking of the inventory. OAG April 29, 1947 (219-K).

Laws 1947, Chapter 601, imposes an excise tax on wines and liquors. Thirty percent of the tax is set aside for a separate account and apportioned by the state auditor to the counties, cities, villages, and boroughs on the basis of population. The amount received by the county is apportioned among the towns of the county. OAG Feb. 20, 1948 (218-K).

A non-commissioned officers' club which is not an instrumentality of the federal government cannot receive exemption from a state excise tax on beer. OAG Feb. 3, 1948 (218-K).

In distribution to villages or other municipalities of the proceeds of the liquor tax, under the provisions of Laws 1947, Chapter 601, or the cigarette tax, under Laws 1947, Chapter 619, the auditor must base the distribution upon the last federal census and cannot take into account increases in population of the village arising from annexation of new territory or otherwise. The 1940 census is the basis of apportionment. OAG March 8, 1948 (218-K) (830-C).

Intoxicating liquor withdrawn for sale in Minnesota from United States bonded warehouses on or after July 1, 1949, must have affixed to containers stamps equal to the ten percent rate. OAG May 27, 1949 (218-K).

The commissioned officers' mess at the naval air station, Minneapolis, is not subject to the excise tax on intoxicating liquors. OAG May 11, 1951 (218-K).

Refund of money paid for stamps may not be made in the following cases:

When containers of intoxicating liquor with tax stamps affixed are destroyed by accident, design, or disaster in the hands of a wholesale dealer;

When intoxicating liquor with tax stamps affixed to the containers are broken or destroyed in the hands of a common carrier while moving from a Minnesota wholesaler to a retailer;

When intoxicating liquor in the hands of the retail dealer is broken or destroyed. OAG April 19, 1948 (218-N).

#### 340.49 STAMPS

**HISTORY.** Ex1934 c 58 s 5; 1951 c 432 s 1.

**NOTE:** The provisions of section 6.22 relating to the sale of excise tax stamps supersedes the provisions of section 340.49.

**NOTE:** All requirements of section 340.49 for the purchase, affixation, and cancellation of excise tax stamps are of no further force or effect.

Intoxicating liquors consigned to a social group not an adjunct to the federal government, located at Wold-Chamberlin Air Base are subject to Minnesota excise tax on intoxicating liquor. OAG Feb. 8, 1949 (218-K).

Refunds are paid out of the accounts to which the receipts from the sale of stamps have been credited and in the same proportion as they were credited to said accounts at the time of sale. OAG August 3, 1949 (454-E).

**340.491 FERMENTED MALT BEVERAGES; TAX PAYMENTS**

HISTORY. 1953 c 365 s 1.

**340.492 MANNER AND TIME OF PAYMENT; PENALTIES; DEPOSIT OF TAX PROCEEDS**

HISTORY. 1953 c 365 s 2.

**340.493 FERMENTED MALT BEVERAGES; SHIPMENT INTO STATE; LICENSES**

HISTORY. 1953 c 365 s 3.

**340.50 EXCEPTIONS**

Intoxicating liquor withdrawn for sale in Minnesota from United States bonded warehouses on or after July 1, 1949, must have affixed to containers stamps equal to the 10 percent rate. OAG May 27, 1949 (218-K).

If a wholesale liquor dealer sells liquor for delivery and consumption in another state, the Minnesota stamp on the containers may be defaced in the presence of a liquor control inspector and a refund of the tax money is proper. OAG April 19, 1948 (218-M).

Refund of money paid for stamps may not be made in the following cases:

When containers of intoxicating liquor with tax stamps affixed are destroyed by accident, design, or disaster in the hands of a wholesale dealer;

When intoxicating liquor with tax stamps affixed to the containers are broken or destroyed in the hands of a common carrier while moving from a Minnesota wholesaler to a retailer;

When intoxicating liquor in the hands of a retail dealer is broken or destroyed. OAG April 19, 1948 (218-N).

**340.51 ENFORCEMENT; EMPLOYEES; RECORD OF SALE OF STAMPS; INSPECTION OF BOOKS AND PREMISES**

Any prosecution of violation of a city ordinance forbidding the sale of intoxicating liquor to minors, evidence of sales other than the one charged in the complaint, was admissible where so related as to show a general scheme or plan to violate the ordinance. Violation of the city ordinance need not be proved beyond a reasonable doubt. City of St. Paul v Greene, ..... M ....., 56 NW(2d) 423.

Refund of money paid for stamps may not be made in the following cases:

If containers of intoxicating liquor with tax stamps affixed are destroyed by accident, design, or disaster in the hands of a wholesale dealer, no refunds are paid.

If intoxicating liquor with tax stamps affixed to the containers are broken or destroyed in the hands of a common carrier while moving from a Minnesota wholesaler to a retailer, no refunds have been granted.

When intoxicating liquor in the hands of the retail dealer is broken or destroyed, no refunds have been granted. OAG April 19, 1948 (218-N).

**340.52 INVOICES OF LIQUORS IMPORTED**

Intoxicating liquor withdrawn for sale in Minnesota from United States bonded warehouses on or after July 1, 1949, must have affixed to containers stamps equal to the 10 percent rate. OAG May 27, 1949 (218-K).

**340.54 UNSTAMPED LIQUOR**

HISTORY. Ex1934 c 58 s 10; 1945 c 310 s 1; 1953 c 729 s 1.

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Intoxicating liquor withdrawn for sale in Minnesota from United States bonded warehouses on or after July 1, 1949, must have affixed to containers stamps equal to the 10 per cent rate. OAG May 27, 1949 (218-K).

**340.57 CERTAIN CITIES MAY ISSUE LICENSES**

**HISTORY.** 1935 c 78 s 1; 1949 c 536 s 1; 1953 c 440 s 1.

One of the regulations of the liquor control commissioner provides that the location of business of a retail liquor licensee may be changed subject to the approval of the municipal council and the commissioner in cases of off sale licenses. Under the provisions of section 15.042, subdivision 3, the above quoted regulation has the force and effect of law. The provisions of section 340.57 do not change or modify the validity of the above quoted regulation. Upon proper application being made by a dealer in Minneapolis, the commissioner may exercise his sound discretion as to whether or not the motion should be granted. The action of the commissioner must not be arbitrary or unreasonable. OAG May 5, 1950 (218-G-10).

**340.60 LIQUOR RECEIPTS**

**HISTORY.** 1935 c 130 s 1; 1947 c 601 s 2; 1949 c 501 s 1.

The excise tax upon wines and liquors is apportioned by the state auditor to the several counties, cities, villages, and borough. It is the duty of the county auditor to distribute the liquor tax received to the various towns in accordance with section 340.60, retaining for the use of the county such portion as is attributable to the population of unorganized territory within the county. OAG Feb. 20, 1948 (218-K).

Laws 1947, Chapter 601, imposes an excise tax on wines and liquors. Thirty percent of the tax is set aside for a separate account and apportioned by the state auditor to the several counties, cities, villages, and boroughs on the basis of population. The amount received by the county is apportioned by the county among the towns of the county. OAG Feb. 20, 1948 (218-K).

A town board has no authority to refuse its apportionment of the liquor excise tax payable to the town under Laws 1947, Chapter 601, Section 2, Subdivision 2. OAG Sept. 29, 1948 (554-E).

**340.601 EVASION, GROSS MISDEMEANOR**

**HISTORY.** 1947 c 601 s 3.

**340.602** Repealed, 1953 c 695 s 3.

**340.61** Repealed, 1953 c 695 s 3.

**340.62 CERTAIN LIQUOR REGISTERED**

The language "After the sale of any brand of intoxicating liquor has been discontinued within the state for a period of three years by the manufacturer or wholesaler distributing it, said brand and its brand label and any and all registers thereof in the state shall thereafter be conclusively presumed to have been abandoned by said manufacturer or wholesaler" is not retroactive in its application but relates to future events and circumstances. *Benz v Schenley*, 227 M 249, 35 NW(2d) 436.

**SEIZED LIQUOR, DISPOSAL**

**340.63 SEIZED LIQUORS; DESTRUCTION, DISPOSAL**

Liquor seized without a search warrant, but used as evidence, may be seized by the liquor control commissioner and disposed of as directed in section 340.63. OAG July 18, 1950 (218-F-1).

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INTOXICATING LIQUORS, BEER 340.72

## SEARCH, SEIZURE

### 340.65 SEARCH AND SEIZURE

The law does not authorize the issuance of search warrants where non-intoxicating malt liquor only is involved; so that, when a licensee lived in the same building where his business was licensed, the marshal cannot search his kitchen except by permission or if he has a warrant of arrest. OAG May 17, 1947 (217-G).

In distribution of liquor tax to village, increase in population of village as result of annexation of new territory after last federal census, could not be considered. OAG March 8, 1948 (218-K).

### 340.67 OFFICER TO MAKE INVENTORY.

HISTORY. 1901 c 252 s 3; RL 1905 s 1554; GS 1913 s 3173; 1937 c 185 s 3.

Confiscated liquor should be destroyed or disposed of as ordered by the court and the proceeds of any sale thereof should be paid to the county school fund. OAG May 6, 1948 (218-F-1).

## VIOLATIONS, PENALTIES

### 340.70 CERTAIN ACTS A FELONY

An insurance policy covering an employee of a municipal liquor store which only covers liability under section 340.95 is not sufficiently broad. The policy should cover all the liabilities. OAG Oct. 3, 1949 (218-R).

### 340.71 SELLING OR GIVING AWAY ANY POISONOUS LIQUOR, GROSS MISDEMEANOR

A village may by ordinance regulate, but may not prohibit, the sale of canned heat or other substance containing poisonous matter capable of causing serious physical or mental injury, but it may not prohibit the sale of canned heat to Indians. OAG Nov. 29, 1951 (218-J-9).

### 340.72 PLACES WHERE SALE FORBIDDEN

HISTORY. 1866 c 40 s 1; GS 1866 c 16 s 1; 1875 c 112; 1876 c 80 s 1; GS 1878 c 16 s 1, 17; GS 1878 c 37 s 14; 1883 c 70 s 1; 1889 c 21 s 1; GS 1894 s 1990, 2006, 2008, 3923; 1895 c 191 s 1; RL 1905 s 1533; GS 1913 s 3142; MS 1927 s 3238-3.

In a county having voted in favor of the sale of intoxicating liquor through the establishment of municipal stores, any village therein in which the vote at the last local option election therein was in favor of license may establish a municipal store without an election. If at the last option election the village vote was not in favor of license, then it is necessary to hold an election pursuant to section 340.20 before a municipal store can be established. When properly authorized to establish a municipal store, the council in its discretion may establish an off sale store, or an on sale store, or both. OAG Oct. 26, 1949 (218-R).

A school building does not come within the purview of section 340.72 if it has not been used for school attendance for several years. OAG April 19, 1947 (217-F).

No election is necessary to establish a municipal liquor store in a village which was wet at the last local option election. OAG Nov. 3, 1947 (218-C-2).

The vote of a municipality at a county option election has no bearing as to whether it may authorize the sale of intoxicating liquor therein without a local election. Neither has change of status of a municipality from a village to a city any bearing on the question. OAG March 31, 1953 (218-C-2).

If a majority of the votes at the last local option election, as distinguished from the county option election, or the village was not in favor of license, then the sale

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## 340.73 INTOXICATING LIQUORS, BEER

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of liquor is forbidden and the situation cannot be changed until reversed by a subsequent local option election under section 340.20. OAG Nov. 3, 1947 (218-G-13) (218-C-2).

A municipal liquor store in an eligible municipality must be established by either an ordinance or resolution. Such store when established is subject to the regulations contained in the general statutes governing the sale of liquor, and particularly section 340.14. OAG Nov. 3, 1947 (218-C-7) (218-G-13).

A school site partly within and partly outside of a village is not within 1,500 feet outside of a municipality for the purpose of section 340.72, clause 5. OAG Aug. 2, 1951 (218-G-11-A).

Except for a state normal school, the Minnesota statutes do not prohibit sale of intoxicating liquor in a municipality within any specified distance from school or church therein. A number of municipalities have ordinances prohibiting the sale of intoxicating liquor within a designated distance from a schoolhouse or church. OAG May 15, 1952 (218-G-11-A).

A village council may not issue a license for the sale of intoxicating liquor to a place within 1,500 feet of a public schoolhouse, even though the school is outside the village limits. OAG Jan. 27, 1953 (218-G-11-A).

The village of Ormsby is located on the county line between two counties, the main street of the village being the county line. Originally both counties were dry but recently one of the counties voted in favor of municipal liquor sales. At the last election the majority in the village voted against a license. Consequently, a municipal liquor store cannot be established in the village until the situation shall be reversed at a subsequent local option election to be held pursuant to section 340.20 and 340.21. If the result of the election is for a license it would then be permissible to establish a municipal store in the village of Crosby being in that part of the village located in the wet county. OAG Feb. 10, 1950 (218-G-13).

A club license may be issued in a city which operates a municipal store. The requirements for a club license are found in sections 340.07 and 340.11. OAG Sept. 29, 1949 (218-G-15).

The statute does not forbid the granting of a license to a club to sell intoxicating liquors on its premises in close proximity to a school. License may be granted by the council at its discretion. OAG March 14, 1950 (218-G-15).

## 340.73 PERSONS TO WHOM SALES ARE ILLEGAL

Sale of intoxicating liquor to persons of Indian blood. 33 MLR 50.

A municipality owning and operating an on and off sale exclusive liquor store pursuant to authorization under MSA, section 340.07, subdivision 5, is not required to file the bond required by section 340.12 of on sale and off sale liquor dealers. The owner and operator of an on and off sale exclusive liquor store is not liable to a patron for harm self-inflicted as a consequence of having become so highly intoxicated that he did not know what he was doing from drinking intoxicating liquor furnished to him in violation of section 340.73, subdivision 1, by the operator when the patron was obviously intoxicated. *Stabs v City of Tower*, 229 M 552, 40 NW(2d) 364.

While regulations may be adopted prohibiting the sale of 3.2 beer and intoxicating liquor to spendthrifts and improvident persons among the Indians, it is lawful to sell malt liquors to a person of Indian blood who has adopted the manners and customs of civilization. OAG June 14, 1949 (217-F-3).

Where a notice is served upon liquor dealers to prevent them from selling liquor to a drunkard, under section 340.73 the written notice must be served upon the individual charged with making the illegal sale so that if the notice was served upon the proprietor but the sale was made by a bartender who had no notice, the prosecution would fail for inefficiency of notice. The rule differs somewhat in section 340.78, but in either event personal service upon the proprietor and a posting of the notice would be actual legal notice to the bartender. OAG April 13, 1948 (218-E).

An Indian has adopted a civilized language if he can understand simple words and express thoughts in simple language in a civilized language; and the bartender in deciding whether or not to sell intoxicating liquor to the Indian is confronted with the identical question which a jury would have to decide as to whether or not the Indian had adopted the language, customs, and habits of civilization. OAG April 12, 1948 (218-J-9).

Indians drive automobiles, have radios, attend the movies and wear white men's clothing. They vote, and when they are sick they go to a hospital and are treated by a doctor instead of a "medicine man." He has thus adopted the "customs and habits of civilization" although many are married under tribal laws without regard to our state laws relating to marriage and many separate without benefit of our state divorce laws. OAG Sept. 8, 1953 (218-J-9).

The prohibiting of the sale of liquor to pupils or students does not apply to adult pupils and students. OAG June 5, 1952 (218-J-12).

## **340.731 MINORS, FORBIDDEN ACTS OR STATEMENTS**

**HISTORY.** 1949 c 415 s 1; 1953 c 483 s 2.

The law making it unlawful for a minor to enter premises licensed to sell intoxicating liquor does not apply where the sale of intoxicating liquor is incidental and not the primary business of the occupants of the premises. OAG Feb. 5, 1952 (218-J-12).

Minors may be employed in a drug store holding an off sale intoxicating liquor license, and as part of his duties may carry sealed, unopened bottles from the warehouse or basement to the drug store shelves. OAG Dec. 10, 1953 (218-J-12).

## **340.732 VIOLATIONS, PENALTIES**

**HISTORY.** 1949 c 415 s 2.

## **340.78 SALES TO MINORS AND OTHERS, AFTER NOTICE**

**HISTORY.** 1860 c 47 s 1; 1861 c 53 s 1; GS 1866 c 16 s 10, 13; 1877 c 44 s 1; GS 1878 c 16 s 10, 13; 1887 c 81 s 1; GS 1894 s 1999, 2002; 1895 c 90 s 1; 1895 c 91 s 1; RL 1905 s 1534, 1559; 1907 c 247 s 1; 1911 c 83; 1913 c 538 s 1; GS 1913 s 3148, 3178; MS 1927 s 3238-9.

Where a notice is served upon liquor dealers to prevent them from selling liquor to a drunkard, under section 340.73 the written notice must be served upon the individual charged with making the illegal sale so that if the notice was served upon the proprietor but the sale was made by a bartender who had no notice, the prosecution would fail for inefficiency of notice. The rule differs somewhat in section 340.78, but in either event personal service upon the proprietor and a posting of the notice would be actual legal notice to the bartender. OAG April 13, 1948 (218-E).

Notice forbidding sale of liquor to a drunkard, served on the bartender is actual notice to the proprietor after notice has been seen and examined by the proprietor. OAG April 13, 1948 (218-E).

Notice by the chief of police under section 340.78 is only effective in case of a habitual drunkard. A person who is not a habitual drunkard cannot be placed on the black list merely because when he does drink, what he does consume, brings out fighting qualities. OAG Oct. 3, 1951 (218-E).

If, after written notice has been given, a friend of a habitual drunkard furnishes liquor to said drunkard, the furnishing is a crime, and the furnisher may be prosecuted under the provisions of section 340.78. OAG Dec. 11, 1953 (218-E).

## **340.81 EXCLUSION OF MINORS FROM PLACES WHERE LIQUOR IS SOLD; AFTER NOTICE, PENALTY**

This section is applicable to on sale and off sale intoxicating liquor, but does not apply to the sale of non-intoxicating malt liquor. Notice by a member of the



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## 340.82 INTOXICATING LIQUORS, BEER

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habitual drunkard's family has the same legal effect as notice by a public official. The notice need not be publicly posted. OAG Oct. 30, 1950 (218-E).

### 340.82 SALE TO INDIANS

In a prosecution for selling liquor to a person of Indian blood, the state must prove beyond a reasonable doubt not only that the sale was made to one of Indian blood, but that such person had not adopted the language, customs and habits of civilization. City officials are not criminally liable where the bartender in the city operated municipal liquor store inadvertently makes an illegal sale of liquor to an Indian. OAG April 12, 1948 (218-J-9).

340.84 Renumbered, 340.83, subdivision 2.

### 340.85 OFFICERS, DUTIES

HISTORY. 1849 c 8 s 7; 1849 c 25 s 3; 1851 c 7 s 8; RS 1851 c 20 s 8; RS 1851 c 21 s 3; 1852 c 8 s 11, 14; 1858 c 74 s 7; PS 1858 c 18 s 3, 21; 1860 c 57 s 2; Ex1862 c 11 s 2; GS 1866 c 16 s 5, 14; GS 1878 c 16 s 5; GS 1894 s 1994; 1895 c 50 s 1; RL 1905 s 1561; GS 1913 s 3185; MS 1927 s 3238-16.

Any prosecution for violation of a city ordinance forbidding the sale of intoxicating liquor to minors, evidence of sales other than the one charged in the complaint, was admissible where so related as to show a general scheme or plan to violate the ordinance. Violation of the city ordinance need not be proved beyond a reasonable doubt. City of St. Paul v Greene, ..... M ....., 56 NW(2d) 423.

A village constable may be employed in the municipal liquor store. OAG Dec. 9, 1947 (358-E-8).

### 340.941 SALE BY EMPLOYEE

HISTORY. RL 1905 s 1565; GS 1913 s 3191.

This section does not apply to the sale of non-intoxicating malt liquor. OAG Aug. 17, 1953 (217-F).

### 340.95 INJURIES CAUSED BY INTOXICATION, CIVIL ACTIONS

An action to recover damages for illegal sale is not for a wrong known at common law, but is a means of enforcing the penalty imposed on the dealer by statute or ordinance and by his own contract. Fox v Swartz, 228 M 233, 36 NW(2d) 708.

Both at common law and under section 340.95 a minor patron of a retail liquor dealer has no cause of action against the seller for damages sustained as the result of his consumption of liquor illegally sold to him. Gavin v Smith, 228 M 322, 37 NW(2d) 368.

A municipality owning and operating an on and off sale exclusive liquor store pursuant to authorization under MSA, section 340.07, subdivision 5, is not required to file the bond required by section 340.12 of on sale and off sale liquor dealers. The owner and operator of an on and off sale exclusive liquor store is not liable to a patron for harm self-inflicted as a consequence of having become so highly intoxicated that he did not know what he was doing from drinking intoxicating liquor furnished to him in violation of section 340.73, subdivision 1, by the operator when the patron was obviously intoxicated. Stabs v City of Tower, 229 M 552, 40 NW(2d) 364.

In an action for injuries sustained when defendant's automobile, in which the plaintiff was riding, went off a highway while attempting to pass the second defendant's automobile at night and where there was no testimony as to the use of narcotic drugs and the evidence did not establish that either of the defendants were under the influence of intoxicating liquor, the refusal of the trial judge to instruct the jury that it was unlawful for any person who was a habitual user of

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narcotics or under the influence of intoxicating liquor to operate a vehicle within the state was not reversible error. *Dahlin v Kron*, 232 M 312, 45 NW(2d) 833.

So far as infliction of physical injuries upon a third party is concerned, a person may be deemed intoxicated when his excessive use of intoxicants has produced such a material change in his normal mental status that his behavior becomes unpredictable and uncontrolled, and as a result, slight irritations, real or imaginary, cause outbursts of anger which find expression in acts of physical violence against another. *Hahn v City of Ortonville*, ..... M ....., 57 NW(2d) 254.

In an action against a municipality for injuries to plaintiff as a result of an assault committed on him by a minor, who had allegedly made illegal liquor purchases at a municipal liquor store, purportedly resulting in his intoxication and an assault, the evidence sustains the finding that the minor was intoxicated at the time he struck plaintiff and that an illegal sale had been made to the minor. *Hahn v City of Ortonville*, ..... M ....., 57 NW(2d) 254.

An insurance policy covering an employee of a municipal liquor store which only covers liability under section 340.95 is not sufficiently broad. The policy should cover all the liabilities. OAG Oct. 3, 1949 (218-R).

## LIQUORS, WINES; MINIMUM RESALE PRICES

### 340.97 DECLARATION OF POLICY

HISTORY. 1951 c 400 s 1.

The validity of Laws 1951, Chapter 400, providing for the fair trading of intoxicating liquor, is in no way affected by the decision of the United States Supreme Court in the *Schwegman* cases. OAG June 2, 1951 (417-E).

### 340.971 DEFINITIONS

HISTORY. 1951 c 400 s 2.

### 340.972 SCHEDULE OF PRICES

HISTORY. 1951 c 400 s 3.

### 340.973 SCHEDULE, BY WHOM FILED

HISTORY. 1951 c 400 s 4.

### 340.974 MINIMUM CONSUMER RETAIL PRICE LIST

HISTORY. 1951 c 400 s 5.

### 340.975 NO SALES AT LESS THAN RETAIL LIST PRICE

HISTORY. 1951 c 400 s 6.

Liquor wholesalers and brand owners were not indispensable parties to action by federal government against Minnesota liquor dealer and Minnesota liquor control commissioner to enjoin sale of liquor at a price, in excess of that provided for under federal ceiling price regulations, though such wholesalers and brand owners established the minimum prices published by the commissioner under the state Fair Trade Act, which prices, in defendant-dealer's case, were in excess of those permitted under the ceiling price regulations. *United States v Ericson*, 102 F. Supp. 376.

### 340.976 RULES

HISTORY. 1951 c 400 s 7.

### 340.977 VIOLATIONS

HISTORY. 1951 c 400 s 8, 9.

### 340.978 FEES

HISTORY. 1951 c 400 s 10.

## CHAPTER 341

### ATHLETIC COMMISSION

#### 341.01 CREATION

Suspension of sentence. 33 MLR 40.

Bribery of participant in game of sport. 33 MLR 40.

#### 341.03 COMPENSATION; EXPENSES

HISTORY. 1933 c 7 s 3; 1945 c 245 s 1; 1949 c 177 s 1.

#### 341.04 BOXING COMMISSIONER; POWERS, COMPENSATION, ASSISTANTS

Employees of state boards are subject to the civil service law. OAG April 2, 1952 (644-B).

#### 341.05 DUTIES

HISTORY. 1933 c 7 s 5; 1953 c 704 s 1.

The fact that boxing exhibitions are conducted at the University of Minnesota under an amateur franchise issued to Minneapolis Star Journal Charities does not relieve the promoter of the obligation to pay or the commission of its duty to collect the 10 percent gross receipts admission tax. OAG Sept. 4, 1947 (596-B-6).

Only the holder of a boxing license may put on a private boxing exhibition for television purposes. OAG Sept. 12, 1949 (596-B).

Contracts with professional boxers must be in the form approved and required by the commission, otherwise the commission need not enforce such contract. OAG Dec. 1, 1949 (596-B).

#### 341.06 MONEYS PAID INTO STATE TREASURY

HISTORY. 1933 c 7 s 6; 1945 c 245 s 2; 1949 c 177 s 2.

As the commission operates from income and revenue, it must pay into the state employment retirement fund 56 percent of the total amount deducted from salaries of its employees. OAG July 24, 1947 (331-A-4).

Funds received from the state athletic commission from boxing receipts and appropriated to the division of social welfare to aid county sanatoria, together with funds appropriated by Laws 1947, Chapter 535, are cancelled at the end of each fiscal year if they are unobligated. OAG Aug. 3, 1948 (9-A-10).

#### 341.07 LICENSES, RESTRICTIONS

The boxing franchise for the city of St. Paul does not govern boxing exhibitions at the state fair grounds. For state fair grounds exhibitions a separate franchise