

89022

GENERAL STATUTES OF MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES
AND OTHER LAWS OF A GENERAL AND PERMANENT
NATURE, ENACTED BY THE LEGISLATURE
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

FRANCIS B. TIFFANY



WEST PUBLISHING CO.

1918

rate resolutions duly passed, the amount of taxes to be levied for the ensuing year for the support of the poor in such county, the maintenance of the poor house and other buildings provided for the care of the poor, including the erection of any building or the making of any improvements for such purpose, and for the care, support, maintenance and operation of said hospital. The adoption of such resolution shall constitute a levy on the taxable property in such county to the full amount named therein, provided, however, that the tax so levied for said hospital purposes shall not exceed five-tenths of one mill (5/10 of \$.001) upon the said taxable property in said county. On or before the fifth day of October in each year said board shall file a certified copy of each of said resolutions with the county auditor of such county, who shall thereupon enter the amount upon the tax list, and thereafter proceed to the assessing and collecting of such tax in the same manner as village or corporation taxes. Such taxes when collected shall be placed in, or credited to the hospital fund and to the poor fund, respectively. ('17 c. 187 § 4)

[3108—]5. **Partial invalidity**—Should any paragraph or separate provision of this act be held invalid by any court having jurisdiction thereof so to determine, such decision or judgment shall not be held to affect any other paragraph or provision hereof or herein. ('17 c. 187 § 5)

[3108—]6. **Existing laws**—All existing laws, not hereby expressly repealed, shall be construed in such a way as to effectuate and carry out the terms, conditions, spirit and purpose of this act, and to that end such laws shall be made to conform to and assist in carrying out this act. ('17 c. 187 § 7)

CHAPTER 16

INTOXICATING LIQUORS

LICENSES

3109. Sale, when and where forbidden—Penalty—Any person who shall sell any intoxicating liquors in quantities less than five gallons, or in any quantity, to be drunk upon the premises, in any city, village or borough, in the State of Minnesota, except as provided by law, or any person who shall sell any intoxicating liquors in any quantity in the State of Minnesota outside of the corporate limits of cities, villages or boroughs therein, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars, and the costs of prosecution, and by imprisonment in the county jail not less than thirty days. Provided, that the provisions of this act shall not prevent any person, firm or corporation, operating a bona fide brewery now in existence, located outside the corporate limits of an incorporated city, village or borough, in any county wherein the sale of intoxicating liquor is not prohibited by law, from selling at such brewery malt liquors, actually manufactured therein, in quantities of five gallons or over; and provided that nothing in this act shall in any way repeal, modify, or affect chapter 23, General Laws of Minnesota for 1915 [3161—1 to 3161—18], or any part thereof. (Amended '17 c. 32 § 1)

It is not contrary to the public policy of the state to give to cities of the first class power to prohibit the liquor traffic, and such power may be given to a city of the first class operating under a home rule charter (134-355, 159+792). Intoxicating Liquors, [§10\(1\)](#).

While this chapter governs municipalities operating under special charters, such municipalities are free to impose such other and additional restrictions as may lie within the power conferred upon them by their charters (134-355, 159+792). Intoxicating Liquors, [§11](#).

Evidence held not to sustain a conviction for sale of intoxicating liquors without a license contrary to a city ordinance (124-124, 144+745). Intoxicating Liquors, [§236\(1\)](#).

Upon a trial for illegal sale of intoxicating liquor, the admission of express receipts to show shipments of liquor to defendant was not error (162+683). Intoxicating Liquors, [§233\(1\)](#).

On a trial under an indictment for the unlawful sale of intoxicating liquor, evidence of other sales at about the time of the sale mentioned in the indictment was admissible (162+683). Criminal Law, ¶2.

Where defendant denied that he furnished the liquor as charged refusal of an instruction that if he furnished the liquor in a spirit of hospitality he committed no crime was not error (132-4, 155+766). Criminal Law, ¶814(1).

Evidence held to support a conviction under this section (132-4, 155+766). Intoxicating Liquors, ¶236(11).

3114. Licenses by whom granted, etc.—No license to sell intoxicating liquor within this state shall be issued or granted, except in incorporated cities, villages and boroughs. Such license may be granted by the council of any such city, village or borough. Every such license shall be for one year from its date, unless sooner annulled, shall specify the room in which sales are allowed, and shall state that the person named is authorized to sell such liquor only in such place and at the time, in the manner, and to the persons allowed by law. (Amended '15 c. 147 § 1)

Constitutionality of this section as amended by 1915 c. 147, with respect to dispensing with the requirement of Const. art. 4 § 20, as to readings of the bill (see 130-424, 153+749; notes under Const. art. 4 §§ 20, 21, and G. S. 1913 §§ 41, 8+14).

Mayor, authorized by ordinance to sign license, cannot impose conditions in license (121-348, 141+495). Intoxicating Liquors, ¶79.

What constitutes issuance of license (121-348, 141+495). Intoxicating Liquors, ¶80.

A license to sell liquor in a rural township, for a period of one year from May 8, 1915, issued pursuant to an order of the board of county commissioners, is void, though the order directing the issuance of such license was adopted by the board prior to the enactment of the amendment in 1915 (131-451, 155+216). Intoxicating Liquors, ¶45.

In view of this section, § 3117, referring to "the municipal authorities of any city, village, town or borough," does not make the town board a licensing board (126-505, 148+99). Intoxicating Liquors, ¶148.

3116. Bond—

131-136, 154+795, L. R. A. 1916E, 269; note under § 3117.

Action on bond is one on contract and not for a tort (121-450, 141+793, 47 L. R. A. [N. S.] 183). Action, ¶27(1).

Bond is for protection of all persons injured, and such persons may sue thereon in their own names, though the bond runs to the state (121-450, 141+793, 47 L. R. A. [N. S.] 183). Intoxicating Liquors, ¶88(2).

Under this section and the following section, suit upon a liquor dealer's bond for damages for the death of plaintiff's son killed by train while intoxicated may be brought without obtaining leave of court (162+1054). Intoxicating Liquors, ¶282.

3117. Same—

In action on liquor dealer's bond for death of plaintiff's adult son killed by train while intoxicated, held, that whether accident happened because of his intoxication, and whether his condition was partly due to liquor sold him in defendant's saloon while intoxicated, were for the jury (162+1054). Intoxicating Liquors, ¶316.

The reference in this section to "the municipal authorities of any city, village, town or borough" does not make the town board a licensing board, this being evident from a consideration of § 3114 (126-505, 148+99). Intoxicating Liquors, ¶148.

Action on bond is one on contract and survives death of licensee (121-450, 141+793, 47 L. R. A. [N. S.] 183). Abatement and Revival, ¶53.

The bond protects persons injured, and they may sue thereon in their own names, though the bond runs to the state (121-450, 141+793, 47 L. R. A. [N. S.] 183). Intoxicating Liquors, ¶88(2).

An action on the bond herein prescribed is governed by the six-year statute of limitations, though the act complained of constitutes an assault ordinarily governed by the two-year statute (131-136, 154+795, L. R. A. 1916E, 269). Limitation of Actions, ¶21(1).

Under this section both the principal and surety on a saloon keeper's bond are liable for any damage proximately caused by any act in violation of the conditions of the bond. Thus where one in charge of a saloon pours alcohol on a guest and sets fire to him, there is a violation of the condition that the licensee will keep a quiet and orderly house, and this, though the act does not constitute the statutory crime of keeping a "disorderly house" (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, ¶86(1), 87(1).

3122. Same—License, by whom granted—Bond—Record—Fees—

C. S. 1858 c. 18 § 14, and G. L. 1875 c. 112, cited—126-5, 147+660.

3128. Local option—

No particular form of ballot required (122-149, 142+15). Intoxicating Liquors, ¶34(5).

If a town votes upon the license question, and a village located within the town and not separated therefrom has not voted thereon as an independent municipality, the vote of the town determines the question for all of the territory of the town, including that within the village; but if the village itself as an independent municipality votes upon the question, the

vote of the village determines such question for the territory within the village regardless of the vote of the town (130-336, 153+602). Intoxicating Liquors, [↪](#)40(2).

A sale of intoxicating liquor, by one licensed by the common council of a village during the period of his license, but after the town in which the village is located has voted "no license," is unlawful, where there has been no statutory separation of the village and the town, and both participate in the election (126-505, 148+99). Intoxicating Liquors, [↪](#)148.

3129. Local option in certain villages—Election—

127-318, 149+472.

Marking ballots (122-149, 142+15). Intoxicating Liquors, [↪](#)34(5).

Majority vote necessary to authorize issuance of licenses (122-149, 142+15). Intoxicating Liquors, [↪](#)35.

The findings that four contestees were not resident electors of a village, that each voted unlawfully, and that each cast a vote in favor of license, held sustained by the evidence (126-298, 148+276). Intoxicating Liquors, [↪](#)37.

C. S. 1858 c. 18 § 14, G. L. 1875 c. 112, and G. L. 1885 c. 145 § 48, cited—126-5, 147+660; 124-498, 145+383, 51 L. R. A. [N. S.] 40, Ann. Cas. 1915B, 812.

See 124-107, 144+464.

3130. Same—Licenses, when granted—

127-318, 149+472.

3131. Local option in cities of fourth class—Definitions—

Cited (126-5, 147+660).

3132. Same—Petition—Notice of election—

C. S. 1858 c. 18 § 14, and G. L. 1875 c. 112, cited—126-5, 147+660.

3133. Same—Election, etc.—

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. Intoxicating Liquors, [↪](#)35.

Where a majority of the votes cast upon the question, but not a majority of the whole number cast at the election, were in favor of the issuance of licenses, the proposition authorizing the issuance of licenses was adopted (127-318, 149+472). Intoxicating Liquors, [↪](#)35.

C. S. 1858 c. 18 § 14, and G. L. 1875 c. 112, cited—126-5, 147+660.

3136. Soliciting orders, etc., in local option municipalities—

This act is not unconstitutional on the ground that its subject is not expressed in its title (126-68, 147+829). Statutes, [↪](#)118(1).

3141. Sale, when forbidden—

125-425, 147+820; note under § 3152.

3142. Sale, where forbidden—

The provision of this section forbidding the sale of intoxicating liquors within one-half mile of a town or municipality which has voted no license is constitutional; but the one-half mile zone cannot embrace any territory within a village or city (126-5, 147+660). Intoxicating Liquors, [↪](#)14, 40(2).

A majority of votes cast in favor of the question, as distinguished from the majority of the votes cast at the election, determines the question of the issuance of licenses (127-318, 149+472). Intoxicating Liquors, [↪](#)35.

That a witness is a detective employed to detect violations of liquor laws does not make his testimony incredible as matter of law (135-98, 160+247). Criminal Law, [↪](#)742(1).

A sale of intoxicating liquor by one licensed by the common council of a village during the period of his license, but after the town in which the village is located has voted "no license" is unlawful, where there has been no statutory separation of the village and the town, and both participate in the election (126-505, 148+99). Intoxicating Liquors, [↪](#)148.

Vote of village as determining question of sale of liquor, irrespective of vote of town within which it is located (see 130-336, 153+602). Intoxicating Liquors, 40(2). See, also, note under § 3128, ante.

Cited (131-287, 155+92) on the proposition as to whether illegally marked ballots are to be counted in determining whether a majority of the votes cast have favored the measure submitted. Intoxicating Liquors, [↪](#)35.

3148. Sale, to whom illegal—

In general—Evidence held to support a conviction under this section (124-408, 145+39). Intoxicating Liquors, [↪](#)232.

Minors—A city ordinance, making it unlawful for a minor to frequent a saloon, is not in conflict with this section (126-521, 148+471). Intoxicating Liquors, [↪](#)11.

To render a sale of liquor to a minor unlawful, notice forbidding such sale need not have been given (124-162, 144+752, Ann. Cas. 1915B, 377). Intoxicating Liquors, [↪](#)159(1).

The proprietor of a saloon is liable to the penalty imposed for a sale to a minor, though the sale is made by the barkeeper without the knowledge or assent of the employer (124-162, 144+752, Ann. Cas. 1915B, 377). Intoxicating Liquors, [↪](#)168.

Sufficiency of notice—"Boyce" and "Boise" are idem sonans, and the use of one of such names in a notice under this section and proof of the other is not a fatal variance (129-409, 152+775). Names, Ⓒ16(2).

A notice under this section, served upon a bartender on duty, is sufficient, where it is thereafter seen and examined by defendant, the proprietor (129-409, 152+775). Intoxicating Liquors, Ⓒ161.

The notice need not show on its face that the person signing it is one of the persons authorized by this section to give the warning; it being sufficient that such fact be established at the trial (129-409, 152+775). Intoxicating Liquors, Ⓒ224.

Prostitutes—A woman to whom liquor is furnished, contrary to § 3148, is not an accomplice of the person selling the liquor (124-408, 145+39). Criminal Law, Ⓒ507(1).

Evidence of issue of license—A record kept by the village clerk held competent, evidence of the issuance of a liquor license (126-45, 147+822). Intoxicating Liquors, Ⓒ234.

Competency of witnesses to testify as to intoxication of another—Persons who observe the appearance and actions of a purchaser of liquor were properly permitted to testify as to his intoxication (126-45, 147+822). Intoxicating Liquors, Ⓒ232.

3150. Licenses, how annulled—

Cited (126-5, 147+660).

Though refundment rests in discretion, and the right thereto is not an existing one, such right is assignable, and the assignee takes title to the money refunded immediately upon the entry of the order therefor, and the transfer is within the rule of equitable assignments (129-223, 152+265). Assignments, Ⓒ26.

3152. Revocation—

In proceedings under this section, the licensee is entitled to notice and an opportunity to be heard on the charges against him; but, if he appears and fails to object, he waives defect in the notice and in the form of the charges (125-425, 147+820). Intoxicating Liquors, Ⓒ108(2, 4).

3153. License money, how applied—

The sureties on the bond of a county auditor are not liable for money paid to the auditor under this section, and converted by him, since the money is payable into the county treasury, and the auditor had no authority to receive the same, and such receipt was outside the scope of his official duties (133-274, 158+394). Counties, Ⓒ98(1).

3155. Liability for acts of intoxicated person—

The act of a bartender in pouring alcohol on a guest and setting fire to him does not come within this section, where the bartender was not intoxicated (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, Ⓒ86, 87.

[COUNTY OPTION]

[3161—]1. **Definitions**—That in this act the word, "County" shall mean the particular county in which it is sought to secure prohibition pursuant to the terms hereof, the terms "Auditor," "County Board" and "Voters" shall refer respectively to the county auditor of said county, the county board thereof and the qualified voters therein; the terms "Intoxicating Liquor" and "Liquor," "sell" and "Sale" shall be given the same meaning respectively as is prescribed therefor in Section 3188 of the General Statutes of Minnesota for 1913, and the term "City," "Village," "Municipality," "Council," "Contestant" and "Contestee," the meaning prescribed therefor respectively in Section 299 of said General Statutes of Minnesota for 1913. ('15 c. 23 § 1)

[3161—]2. **Election to determine whether sale shall be prohibited**—**Petition**—That whenever there shall be presented to the county auditor of any county within this state a petition signed by any number of the qualified voters thereof, equal to or exceeding twenty-five (25) per cent of the total number of votes cast therein for governor at the last preceding general election, praying that a special election be held in said county to determine whether the sale of intoxicating liquors shall be prohibited therein, said auditor shall forthwith file such petition in his office, and thereafter keep and retain the same as a part of the records and files thereof, and said petition so presented and filed shall be prima facie evidence of the facts therein stated. Every such petition shall be substantially in the form hereinafter provided, and every such petitioner shall, opposite his signature thereto, specify his residence, giving the street and number, if any, and no voter shall sign his name to or withdraw his name from any such petition after the same has been so pre-

sented to the county auditor. Said petition shall also contain a written or printed oath to the effect that the petitioner is a legal voter of said county and knows the contents and purpose of said petition and signed the same of his own free will, and each petitioner shall at the time of signing be sworn as aforesaid. No signature shall be valid unless the date of the verification of the signer is less than ninety (90) days before the date of its presentation to the county auditor. Said petition when so presented may consist of separate petitions fastened together as one document, and containing in the aggregate the number of voters hereinbefore specified. ('15 c. 23 § 2)

This act does not violate Const. art. 4 § 36, and is valid (132-298, 156+249). Intoxicating Liquors, ~~14~~.

[3161—]3. **Submission to voters—Duty of auditor—Election, when held**—The auditor shall upon the filing of said petition in his said office, forthwith make and file therein an order bearing his signature and his official seal directing the submission to the voters of said county of the question whether the sale of intoxicating liquors shall be prohibited therein, at a special election for such purpose, to be held on a Monday occurring not less than forty (40) days nor more than fifty (50) days after such filing of said petition; provided, however, that if said petition is presented to the auditor within sixty (60) days prior to any primary or general election in said county or any regular town or village election therein, then, and in such event, the election to be held hereunder upon the presentation of such petition shall be fixed for a Monday not less than thirty (30) days nor more than forty (40) days subsequent to said primary, general, or regular town or village election; provided that said election shall not be held on the same day as any other regular municipal election; and provided that the time during which the holding of such election may be postponed by any obstacle shall not be a part of the time within which the election is hereby required to be held and provided further that no election in any such county under the provisions of this act shall be ordered or held within three (3) years subsequent to a previous election hereunder in such county, unless such previous election shall have been set aside or adjudged invalid. ('15 c. 23 § 3)

[3161—]4. **Notice of election**—Said auditor shall immediately upon such filing of said petition and affidavits and his said order, make and file in his office a notice of such election, bearing his signature and official seal, and thereupon and at least twenty-five (25) days prior to the time fixed for the holding of said election serve a duplicate copy of said notice personally or by registered mail upon the clerk or recorder of each village, city or town within said county, and shall forthwith make and file in his office an affidavit showing the time and manner of such service, whereupon, each clerk or recorder shall at least fifteen (15) days before said election, cause to be posted in three conspicuous places, in each election district of his city, village, or town, a notice of said election, and one copy of each notice so posted together with proof of such posting thereof by affidavit of the person posting the same shall be forthwith filed by each said clerk and recorder in his respective office. Failure for any cause to give any of the notices herein required or to make or file proof thereof shall not be held to invalidate any election held hereunder. ('15 c. 23 § 4)

[3161—]5. **Judges and clerks of election**—The members of the town board shall be judges of such election in the election district in which they respectively reside unless all are of like belief, either in favor of prohibiting the sale of intoxicating liquors in said county or against the prohibition thereof in which case not more than two, determined by lot unless otherwise agreed upon, shall act as judges. But no member of such board shall be compelled to serve as judge, and if any decline they shall notify the town board in time to fill the place by appointment.

The council of every municipality at least ten (10) days before such election, shall appoint to be judges thereof three (3) qualified voters of each district therein, at least one (1) of whom shall be known to be in favor of pro-

hibiting the sale of intoxicating liquors in said county, and one (1) shall be known to be against prohibiting such sale. But in villages having but one (1) district and not included in any town district, the members of the council shall be judges, subject to the qualifications and restrictions provided for town boards in like cases.

The judges of each district shall appoint two (2) qualified voters therein as clerks except that in towns, the town clerk, and in villages having but one (1) district and not included in any town district, the village clerk or recorder shall serve as one (1) of the clerks in the district where he resides. No more than two (2) judges and one (1) clerk, in any district shall be of like belief, either in favor of prohibiting the sale of intoxicating liquors in said county or against prohibiting such sale, and no person shall be eligible as judge or clerk unless he can read, write and speak the English language understandingly. And no additional judge or clerks to be known as ballot judge or clerks shall be appointed. Whenever for any reason it becomes necessary to appoint one or more judges in order to provide three judges for each election district, the town board or council shall at least five (5) days before the time fixed for the holding of said election appoint the number required. Vacancies in the office of judge or clerk by reason of failure to appear at the time and place of said election or otherwise shall be filled as provided by law for general elections in this state, subject to the qualifications and restrictions hereinbefore prescribed. ('15 c. 23 § 5)

[3161—]6. **Challengers**—The judges shall allow one (1) voter, known to be in favor of prohibiting the sale of intoxicating liquors in such county and one (1) known to be against prohibiting such sale, to be in the room where the election is held, to act as challengers of voters. Such challengers shall be subject to the provisions of law relating to challengers in case of general elections. ('15 c. 23 § 6)

[3161—]7. **Ballots**—The ballots for said election shall be printed in the following form, words and characters:

Shall the sale of liquor be prohibited?
	: Yes :

	: No :

The voter shall mark a cross in one (1) of the above squares to express his choice. Such ballot shall take the place of the official ballot required for general elections and, together with a sufficient number of blank forms for lists and affidavits, and such other blanks as are required in preparing for and conducting such election, shall be prepared under the direction of the county auditor and with such forms and blanks by him delivered to the proper clerks or boards in sufficient quantities and in time to enable them to comply with the provisions of this act, all as provided by law in case of general elections for county officers. ('15 c. 23 § 7)

Cited in dissenting opinion (131-287, 155+92).

The sufficiency of the markings on various ballots in an election under this section considered and determined in the light of G. S. § 491 (see 131-303, 155+97). Intoxicating Liquors, 35.

[3161—]8. **Conduct of elections**—In all elections hereunder, except as to matters herein otherwise provided for, all provisions of law governing general elections for county officers in this state, including penal provisions and provisions relating to compensation of officials, and to payment of expenses incurred in preparing for and conducting elections, shall apply and govern as far as applicable. Provided that the compensation of the members of the county canvassing board shall be the same as the compensation of the members of the county canvassing board provided for by said election laws. The ballots shall be given to electors, marked, cast, counted, canvassed, returned and preserved, and returns made and delivered to the auditor, all substantially in accordance with the law governing general elections for county officers.

It shall not be necessary to make new election districts or to make any new register of voters for any election held pursuant to this act prior thereto, but the judges of such election in each district shall take from the custodian thereof and use at such election the register of voters used in said district at the general election next preceding said election so as to be held as herein provided. If any person shall offer to vote in any such districts whose name does not appear on such registration list, his name shall be entered thereon upon his taking such oath, answering such questions, and complying with such other provisions as shall be required by the then existing laws regulating the registration of voters. After his name is so entered and before he receives the ballot, the judges shall administer the following oath:

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

Upon taking this oath if the judges are satisfied he is a qualified voter, he shall be allowed to vote. If such person refuses to take this oath, he shall not be allowed to vote and his name shall be removed from the register. ('15 c. 23 § 8)

[3161—]9. **County Canvassing Board**—The auditor, the chairman of the county board, and two qualified electors of the county, appointed by the auditor, one (1) known to be in favor of prohibiting the sale of intoxicating liquors, in said county, and one (1) known to be against prohibiting such sale, shall constitute the county canvassing board, any three of whom at least one being known to be in favor of prohibiting and one being known to be against prohibiting such sale, being present and sworn shall have power to act; and it shall be the duty of the auditor to appoint electors willing to act on said canvassing board as soon as practicable and within five (5) days after the day of said election. Such board, as soon as practicable and within ten (10) days after said election, shall meet at the auditor's office and there publicly canvass the returns made to said auditor. Such canvass shall, forthwith and within fifteen (15) days after said election, be completed and thereupon said board shall certify in writing the result of said canvass, and forthwith file their certificate thereof, duly signed by the members of the board so acting, with the county auditor of said county. ('15 c. 23 § 9)

[3161—]10. **Contests—Mandamus**—Any voter may contest the validity of such election, as provided by sections 529, 530 and 531 of the General Statutes of Minnesota for 1913, provided that it shall be the duty of the county attorney of such county to appear in defense of the validity of such election in any such contest in his county; and provided further that any voter of said county may appear at any time before trial and defend as contestee therein by serving written notice of his appearance signed by himself or his attorney on the contestant or his attorney, as provided by law, for the service of answers in civil actions. A writ of mandamus shall issue on information of any legal voter of said county to compel the performance of any duty enjoined upon any officer by this act, and all the provisions of Chapter 87, of the General Statutes of Minnesota for 1913 relating to mandamus proceedings shall apply to any proceedings hereunder as far as the same may be applicable. ('15 c. 23 § 10)

[3161—]11. **Effect of prohibition—Suspension of existing laws—Another election**—If a majority of the votes at any such election be cast in favor of prohibiting the sale of intoxicating liquors then, and in that event, and not otherwise, from and after the time of the filing of the certificate of the county canvassing board, as herein prescribed, the operation and enforcement of every statute and of every municipal charter now existing or hereafter enacted or adopted, so far as the same shall make the granting of licenses for the sale of intoxicating liquors or the sale or other disposition thereof, optional with the voters of towns, villages or cities, or any thereof, or in any manner au-

thorize or relate to the granting or issuance of any such license shall become and be wholly suspended in said county, and in each town, village and city therein, and the selling or storing or having in possession for sale or soliciting, receiving or taking any orders for, intoxicating liquors in any quantity whatsoever, and the keeping of any place, structure or vehicle, transient or permanent, where such liquor shall be sold or stored or kept for sale, in any quantity whatever, in any place in such county, shall be illegal and prohibited except as hereinafter otherwise expressly provided and except further that licensees may sell intoxicating liquors until such time as their licenses shall be annulled under the provisions of this act. And six (6) months from and after the time of the filing of the certificate of the county canvassing board, as herein prescribed, the operation and enforcement, within said county, and in each said town, village and city therein, of every statute, municipal charter and ordinance, now existing or hereafter enacted or adopted, so far as the same shall relate to the sale of intoxicating liquor by licensees or the conduct or regulation of licensed public drinking places shall likewise become and be suspended. Each such suspension of the operation and enforcement of every such statute, charter and ordinance, and such prohibition shall continue until another election hereunder shall be held in said county, at which the majority of the votes cast shall be against prohibiting the sale of intoxicating liquors therein, whereupon such suspension and such prohibition shall cease, and all of the then existing statutes, municipal charters and ordinances be thereafter operative and enforceable within said county until the operation thereof shall be again suspended and such prohibition again put in force, under and pursuant to the terms of this act; provided, however, that no suspension of the operation or enforcement of any statute, charter or ordinance under this act shall in any manner prevent or affect the prosecution or enforcement of any offense committed or any penalty incurred at a time prior to such suspension or when same was not in force. ('15 c. 23 § 11)

132-290, 156+125.

Where a county votes to prohibit liquor under this act, the power of all municipalities within the county, including cities operating under home rule charters, to issue licenses for the sale of liquor, is withdrawn (132-298, 156+249). Intoxicating Liquors, Ⓒ40(2).

Where a vote to prohibit the sale of liquors was taken August 2, 1915, and the certificate of the canvassing board was filed August 9, a license issued July 30, 1915, for a term of one year beginning September 1, 1915, was inoperative, and a sale on October 1, 1915, under the license, was unlawful (132-470, 156+251). Intoxicating Liquors, Ⓒ40(3).

In determining the total number of votes cast at the election defectively marked ballots, as well as those properly marked, must be counted (131-287, 155+92; 131-303, 155+97). Intoxicating Liquors, Ⓒ35.

[3161—]12. **Annulment of licenses—Refundment of fees**—During the period of such prohibition and the suspension of the statutes and municipal charters first mentioned in the last preceding section, it shall be unlawful for any licensing board or council within said county to grant any license for the sale of intoxicating liquors therein. Every such license attempted to be granted in said county during such period of suspension or prohibition shall be null and void. And all licenses for the sale of intoxicating liquors granted in said county after the passage of this act for a term which shall not have expired, shall six (6) months from and after such suspension of the statutes or charter pursuant to which the same was granted forthwith be annulled and the holder thereof be liable for the sale of any liquor made by him thereafter the same as though no license had ever been issued to him. The county or municipality issuing such license shall refund to the holder thereof the portion of the fees received and retained by it for such license corresponding to the unexpired term thereof, which shall thereupon be charged in its due proportion to the fund or funds to which it shall have previously been credited, appropriated or applied. ('15 c. 23 § 12)

Adoption of county option by a county by the prohibition of the sale of liquor therein is operative on licenses issued in cities operating under home rule charters (132-298, 156+249). Intoxicating Liquors, Ⓒ40(1).

[3161—]13. **Penalties and prosecutions**—(A) Every person, company, corporation, club, association or society, directly or indirectly, either person-

ally or by clerk, agent or employee, who shall sell or store or have in possession for sale, or shall solicit, receive or take any orders for intoxicating liquor, in any quantity whatever, or who shall keep any place, structure or vehicle, transient or permanent, where any such liquor shall be sold or stored, or kept for sale, in any quantity whatever, in any county wherein the operation or enforcement of statutes, charters or ordinances shall be suspended or such prohibition be in force, as in this act provided, in violation of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty (50) dollars and the cost of prosecution and be imprisoned in the county jail for not less than thirty (30) days, provided that the foregoing provisions in this section contained shall not apply to the keeper of any licensed drinking place until his license shall be annulled as hereinbefore prescribed, provided also that intoxicating liquor, manufactured in said county may be lawfully kept or stored at the place or places of such manufacture or any place in said county where necessary in due course of transportation from the place of manufacture, and provided further that any duly licensed and practicing physician or veterinarian may prescribe or any duly licensed pharmacist actually carrying on business as such may in good faith as such druggists or pharmacists dispense, or keep for the purpose of dispensing, intoxicating liquor under the conditions and restrictions and subject to the penalties prescribed in such cases by Chapter 16, of the General Statutes of Minnesota for 1913, and acts amendatory thereof.

(b) Whoever in making any affidavit accompanying the petition mentioned in section 1 of this act [3161—1], shall knowingly, willfully and corruptly swear falsely thereto, shall be deemed guilty of perjury and on conviction thereof be punished accordingly. Whoever forges the signature of any person upon any such petition shall be guilty of forgery and on conviction thereof be punished accordingly. Any person, who, not being at the time a qualified voter of the county, shall with unlawful intent sign such petition or vote at any election held hereunder and any person who shall induce another, knowing that he is not a qualified voter of said county, to sign such petition or vote at such election, or who shall directly or indirectly present or cause to be presented to the auditor any such petition, knowing or having reason to believe that any signer thereof is not a qualified voter, shall be guilty of a gross misdemeanor. And any public officer or judge or clerk of election who shall willfully fail, neglect or refuse to perform any duty imposed by this act, shall be guilty of a gross misdemeanor. ('15 c. 23 § 13)

Cited (135-387, 160+1015).

The penalties of this section are directed against the seller and not against the buyer; and one who purchases intoxicating liquor in a dry county at the solicitation of another, and with his money and for his use and as his agent, in good faith, and not as a subterfuge or for purposes of evasion, does not commit an offense (135-214, 160+673). Intoxicating Liquors, § 169.

[3161—]14. **Evidence—Complaints, informations and indictments**—The certificate of the county canvassing board, filed as in this act provided, or a duly certified copy thereof, shall be prima facie evidence in all courts of this state of the facts therein set forth and that said election was petitioned for, ordered, held and conducted, all as provided by law. In any complaint, information or indictment for the violation of any of the provisions of this act, it shall not be necessary to set forth the facts showing that the required number of voters in the county petitioned for the election or that the election was held or that a majority voted in favor of prohibiting the sale of intoxicating liquor as herein provided; but it shall be sufficient to allege that the act complained of was then and there prohibited and unlawful. ('15 c. 23 § 14)

[3161—]15. **Duty of officers**—Every sheriff, constable, marshal and policeman shall summarily arrest any person found violating any provisions of this act, and the president or mayor of every municipality shall make complaint of every known violation thereof. And every county attorney shall prosecute all cases arising under this act within his county. ('15 c. 23 § 15)

MINNESOTA STATUTES 1917 SUPPLEMENT

[3161—]16. **Other statutes**—Except as herein provided, all statutes and municipal charters and ordinances operative within the county shall be and remain in full force and effect, so far as the same in any way relate to intoxicating liquors, and keeping of unlicensed drinking places, or the sale or disposition of such liquors to any person or class of persons whomsoever or any penalty or liability therefor. ('15 c. 23 § 16)

[3161—]17. **Construction**—This act shall be liberally construed to effectuate the purpose of its enactment. ('15 c. 23 § 17)

[3161—]18. **Forms**—The petition for election provided for in this act, the order for such election, the notice thereof, to be made and filed by the auditor and thereupon served upon the clerk or recorder, and notice of such election to be prepared and posted by such clerk or recorder, and the certificate of the county canvassing board of the returns thereof, may be in the following forms, respectively.

FORM OF SAID PETITION

"To the Auditor of County, Minnesota:

"The undersigned legal voters of said county pray that an election be held in the said county to determine whether the sale of intoxicating liquor shall be prohibited therein, and we and each of us do solemnly swear (or affirm) that we are legal voters of said county and know the contents and purpose of this petition, and signed the same of our own free will."

Name of Signer	In Cities		Residence
	St.	No.	

FORM OF SAID ORDER

"State of Minnesota }
County of }

"A petition having been filed with the undersigned auditor of said county, signed by a number of qualified electors of said county equal to more than twenty-five (25) per cent of the total number of votes cast in said county for Governor at the last preceding general election, praying that an election be held in the said county to determine whether the sale of intoxicating liquors shall be prohibited therein.

It is hereby ordered, That a special election for such purpose be held in the various election districts in said county on the day of and that notice thereof be given as provided by law.

Dated the day of 19..

.....
County Auditor."

FORM OF SAID AUDITOR'S NOTICE

"To the (Clerk or Recorder) of the (Town, village or city) of in County, Minnesota.

You are hereby notified, That a special election will be held in the several election districts in County on the day of 19.... for the purpose of voting upon the question whether the sale of intoxicating liquors shall be prohibited within said county.

.....
County Auditor."

FORM OF SAID NOTICE TO BE POSTED

“Election Notice”

“To the legal Voters of the (Town, village or city) of in the County of Minnesota.

Notice is hereby given, That a special election will be held at (insert location of polling place) (Insert “In the town of” or “In the village of” or “In the election district in ward of the city of” as may be required) in said county, between the hours of o’clock in the forenoon and o’clock in the afternoon on the day of for the purpose of voting upon the question whether the sale of intoxicating liquors shall be prohibited within county.

..... Clerk (or recorder)”

FORM OF SAID CERTIFICATE

“State of Minnesota }
County of }

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

Dated this day of 19....

.....
.....
.....
.....

(‘15 c. 23 § 18)

County Canvassers.”

PUBLIC DRINKING PLACES

3164. To be kept closed, when—

125-425, 147+820; note under § 3152.

3172. Search warrant—

The proceeding under this section is criminal in character, as against the person accused, and quasi criminal and in rem as against the liquor and appurtenances used in connection with the sale thereof (123-333, 143+907). Action, Ⓒ1S; Intoxicating Liquors, Ⓒ244.

Where a complaint in action against an officer seizing intoxicating liquors under this section does not allege that the property was wrongfully taken, question of a wrongful taking is not in issue (123-333, 143+907). Sheriffs and Constables, Ⓒ168(6).

Property seized under this section is in the custody of the law, and the possession of the officer cannot be disturbed until the proceedings are terminated, and an order of the court disposing of the property is made and served upon the officer, or in some way brought to his official attention. Until such order is made, neither action for possession nor for the loss of the property by the negligence of the officer can be maintained by the owner (123-333, 143+907). Intoxicating Liquors, Ⓒ255, 256.

3173. Liquors, etc., how disposed of—

If the person accused be found guilty, the liquors are to be destroyed, and the other property forfeited to the use of the school fund. But if he is acquitted, an order to restore the property should be made, unless perhaps, the person accused is not an owner thereof, and his acquittal was on the ground that he was not the proprietor of the unlicensed drinking place. The failure of the court to make an order of restitution upon an acquittal of defendant does not render the officer a wrongdoer, or entitle any person, whether the owner of the property or not, to disturb the officer in his official possession (123-333, 143+907). Intoxicating Liquors, Ⓒ255, 256.

PENALTIES AND PROSECUTIONS

3179. Giving, procuring, or purchasing for minors, etc.—

Cited (135-214, 160+673).

3188. Construction of terms—

Cited (135-214, 160+673).

The definitions given in this section are sufficiently clear and complete that they may be given to the jury without further explanation (132-4, 155+766). Intoxicating Liquors, Ⓒ 239(10).

3191. Sale by employee—

126-45, 147+822.

This section is not unconstitutional, as special legislation (124-162, 144+752, Ann. Cas. 1915B, 377). Statutes, Ⓒ 76(5).

The proprietor of a saloon is liable to the penalty for a sale to a minor, though the sale was made by his barkeeper without his knowledge or assent (124-162, 144+752, Ann. Cas. 1915B, 377). Intoxicating Liquors, Ⓒ 168.

The proprietor of a saloon is liable for any sale of liquor to a habitual drunkard, made either by himself or any of his bartenders, after he receives the notice provided for by § 3148 (129-409, 152+775). Intoxicating Liquors, Ⓒ 161.

3199. Securing evidence—Immunity of witness—

This section gives no immunity to the witness from a prosecution for a crime which may be established by independent evidence (126-521, 148+471). Criminal Law, Ⓒ 42.

CIVIL ACTIONS

3200. Action for injuries caused by intoxication—

The bond required by §§ 3116, 3117, though running to the state, is for the protection of all persons damaged, and they may sue thereon in their own names (121-450, 141+793, 47 L. R. A. [N. S.] 183). Intoxicating Liquors, Ⓒ 88(2).

Cause of action for breach of bond survives death of licensee (121-450, 141+793, 47 L. R. A. [N. S.] 183). Abatement and Revival, Ⓒ 53.

Unchallenged instructions, held to be regarded as the law of the case on appeal (121-455, 141+803). Appeal and Error, Ⓒ 853.

This section has no application to the act of a bartender in pouring alcohol on a guest and setting fire to him, where such bartender was not at the time intoxicated (131-136, 154+795, L. R. A. 1916E, 269). Intoxicating Liquors, Ⓒ 86, 87.

CHAPTER 16A

CIGARETTES

3202. Penalty for violation—Any person violating the provisions of section 1 of this chapter shall be guilty of a misdemeanor, and upon first conviction for such violation shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars or imprisonment in the county jail for not less than fifteen days, nor more than sixty days; and upon second conviction for violation of any of said provisions shall be punished by imprisonment in the county jail for not less than thirty days, nor more than ninety days, and his license shall then be terminated as hereinafter provided. (Amended '17 c. 245 § 1)