

## LIQUOR AND THE LAW

Today the last remnants of what could be called "our Victorian Hangover" are being swept away but there remains, in these enlightened times, one bastion of 19th century thinking and practice that has yet to fall. I refer to the legal structure governing the sale and consumption of alcoholic beverages. The thesis of this paper is not the abandonment of all legal control in this area, but, rather, to urge the application of practical, common sense to this legal structure. First, we shall look at the background of legal restriction of liquor, then glance at some of today's state laws. In conclusion, I shall offer reforms which I believe to be fair and just legal remedies and in which I would hope that you will agree.

I feel this to be a timely topic, not only because of the impending local option election here in Christian County, but also because of the ease with which the average person can fall into the trap of violation of these laws. For instance, how many of you, in leaving for a business or pleasure trip from Kentucky have, to keep from being caught short at the end of a hard day's traveling, carried a bottle or two of liquor along? Or have you driven over into Tennessee for the day and forgotten to take that bottle of bourbon, left from a cold day's hunting trip or football game, out of the car? Did you know that if this happened, you were guilty of violating two laws of the state of Tennessee and that if you had been stopped you could have been arrested and fined, or at least been forced to pour it out on the ground? Would you consider yourself a criminal law violator as the law does? This is part of our subject.

Scholars have determined that the Egyptians made beer as early as 4235 B.C. and that in ancient China rice wine was a well-established source of tribute and taxation several thousand years before the birth of Christ. Also, there are numerous references to wine to be found in the Old Testament. Indeed, laws regulating the manufacture and sale of alcoholic beverages are almost as old as the use of those beverages. References to liquor legislation can be traced back as far as 2000 B.C. when the code of King Hammurabi of Babylon provided a death

sentence for wine-sellers who allowed riotous persons on their premises!

Thru the years, many systems of liquor control have been enacted into law, but no ideal system has ever been developed. The most successful laws have been those which aimed at making alcoholic beverages a staple product of commerce and a source of government revenue. Liquor legislation in the United States is unusual in that several regulatory systems are coexistent within the country. They include state-owned wholesale and retail stores, in fifteen states, state-owned wholesale only, in two states, and regulated private sales, both wholesale and retail, in the others. This is due to the sovereign control power, within their borders, vested in the states by the 21st or Repeal Amendment to the U.S. Constitution.

The history of liquor laws in America goes back to the early days of the British colonies. In 1642 a law was passed legalizing the sale of liquor to the Indians. Most of these early laws were for raising revenues but some were of the "blue-law" type. The first federal law was enacted by Congress in 1790, giving a rum ration to the Army. The following year, the first federal excise tax was levied on the sale of distilled spirits. This tax was subsequently rescinded and re-installed over the years and finally made permanently a part of the tax structure in 1862. The rate at that time was twenty cents per gallon - as of 1950, it was nine dollars per gallon, with federal, state, and local taxes accounting for over 50% of the retail price of liquor.

During the 19th Century in America, there was increasing debate as to whether control of liquor was the prerogative of the state or federal governments. This finally culminated in the passage of the Wilson Act of 1890, providing that this matter was subject to the operation of state laws. At the same time, the 19th Century also saw organization of temperance societies with waves of prohibition sentiment sweeping the country in the 1850's, 1880's, and early 1900's. As a result, by 1919 thirty-three states, especially in the south and west, had prohibited the sale of alcoholic beverages. Hastened by World War I, the process of national prohibition began in 1916 with the passage by the Senate Judiciary Com-

mittee of a resolution of national prohibition. This process was completed with Nebraska's ratification of the 18th Amendment on January 16, 1919. Nationwide prohibition became effective one year later, Congress having passed the Volstead Act on October 28, 1918, to carry out the provisions of this amendment. This act prohibited the sale for beverage purposes of all liquor containing over .005 percent of alcohol.

The 18th Amendment was eventually ratified by all the states except Rhode Island and Connecticut. But it soon became evident that this amendment was unenforceable. The 1920's saw a revolution in the manners, customs, and habits of the American people, prompted to a great extent by the public's general inclination to ignore the prohibition laws. This was a momentous time in our social history and "bath-tub gin" provided the stimulus. This was the era when it became fashionable for women to drink and the use of the cocktail became widespread in order to camouflage the taste of the home-made liquor. The drinking of liquor was thus transferred from the corner saloon into the home and, known as "social drinking", became very much a part of home life, both then and now.

But the Prohibition Era had its sinister side, too. This was the decade of the "speak-easys", the gangsters, the rum-runners, and the corrupted officials; in short, the beginning of a certain lawless frame of mind that still haunts us today. This gangsterism, as personified in the person of Al Capone and his Chicago Mob, flourished with the nourishment of illegal manufacture and sale of liquor and beer. Millions of dollars were made by these criminals who learned to consolidate into large-scale bootlegging operations in all the major cities. Repeal should have put an end to this, but many states continued to have restrictive or prohibitive statutes on their books, thus continuing to fill the pockets of the criminal element, which had by now become organized. And this organization was - and is - headed by the Mafia, or "Syndicate" or "Cosa Nostra", which, using its Prohibition bootlegging income as a base, was able to expand into and consolidate a giant national crime network with tentacles reaching into every phase of illegal activity and much legitimate business as well. Truly, we are today paying the

high price of yester-year's "Noble Experiment" in attempting to bring this monster under control.

As the 1920's wore on, public discontent with National Prohibition became increasingly strong. By the end of 1929, three states, New York, Montana, and Wisconsin, had repealed their enforcement statutes. And on February 20, 1933, Congress passed -- the 21st or Repeal Amendment and submitted it to the states for ratification thru special conventions elected for that purpose by popular vote. It was speedily adopted and went into effect December 5, 1933. It marked the end of a tumultuous era in our national life.

The legacy of Prohibition<sup>also</sup> remains with us today in the crazy-quilt patchwork of state liquor control laws. Thus in Kentucky a woman cannot sit at a bar or work behind one. Nor is one allowed to take a drink of liquor in a liquor store although he is allowed to purchase beer there and drink it on the spot. Some states permit the sale of 3.2% beer to those over eighteen; others permit sale of all alcoholic beverages to persons of that age. Oklahoma allows 6% beer to be sold only if hot, while restricting the sale of cold beer to 3.2% alcohol content only. Tennessee until recently prohibited the sale of mixed drinks, resulting in the famous "mixing bars" of Printer's Alley and other places to which a patron was legally required to carry his own bottle and purchase only the ingredients. However, in practice, most mixing bars also sold mixed drinks illegally, a matter of common knowledge, and were only infrequently raided.

The State Of Mississippi provides what is probably the most interesting case of liquor law evasion. Until a local-option law was recently enacted, it was the last legally dry state in the Union. However, some areas of the state were, in fact, wet with the blessing of their local authorities. And the state government increased its revenue with a 10% so-called "black market tax" on these illegal sales! This situation was not changed until the governor and the state police completely dried up the state prior to a statewide referendum on the issue.

Indeed, the quirks of state liquor laws could be the subject for a paper in itself and time and space does not permit a more detailed look.

Prohibition remains in Kentucky today in the form of our local-option dry counties. Kentucky has a total of 120 counties, but woe to the unwary or unknowing traveler, who may develop quite a thirst getting from one wet county to another. For, of the 120, only 26 are wet, or, as is Christian, partially wet. Eight others have one city which is wet in an otherwise dry county. That leaves 86 completely and legally dry counties. One must say "legally dry" for surely no one here is naive enough to believe that there is no liquor for sale in those 86 if one only knows where to look for it!

At the start of Prohibition in 1920, there were 95 totally dry counties in Kentucky, making it appear that over the years the wet forces have made little progress. But in 1920, 86% of the population lived in those 95 counties, while today over half the population lives in wet territory. Thus, with the population shift to urban areas, a minority of the total population holds a majority of the area of the state in a dry status. Obviously, being dry has not helped these small counties to grow economically and to hold onto and increase their population.

At this point, I should also like to point out that the State of Kentucky spends millions of dollars in the promotion of tourism in the state. And a large majority of our tourists come from the adjacent northern states which are, for the most part, wet. But our better and larger state parks are, without exception, located in legally dry counties. Thus much tax revenue is lost both to them and to the state because of the unavailability of liquor and beer. And there are not even any cocktail lounges in our state park lodges. Surely, with the high cost of operating our state parks, these could make a very significant contribution to the total revenue earned by these park lodges. It hardly makes sense not to tap this source.