

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^{also} 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.

I want to consider with you five changes to both Federal and Kentucky liquor laws which I deem necessary in order to modernize their application, both in theory and in practice:

- 1). Lower the legal age for purchase from 21 to 18.
- 2). Allow certain restricted sales on Sunday.
- 3). Equal application or removal of local option laws.
- 4). Issuance of unlimited state resale licenses.
- 5). Protection under Federal law of the individual's right to possession and transportation for personal use.

First, let us consider lowering of the legal age to 18. In this state, by act of the legislature, the age of 18 is considered sufficient for voting, for entering into contracts, for signing deeds, for getting married without parental consent, for ownership of property, both real and personal, without trusteeship by an appointed guardian. In short, the individual of 18 - who has already driven a car legally for two years - is considered to be an adult by the state of Kentucky. Surely this should be so, for the youth of today, with increased exposure to life and life's situations thru television and better, more comprehensive education, have reached a level of maturity and sophistication not seen before in modern times. Also, many in this age group have entered permanent employment and some are already supporting a family. Yet, to purchase one can of beer, they are forced to break the law, patronizing establishments of poor reputation or simply lying about their age. In fact, this arbitrarily high age limit of 21 simply encourages disrespect of this law and disrespect for any law must naturally contribute toward disrespect for other laws. It is easily broken countless times in every day and adequate enforcement is practically impossible in terms of manpower and allocated funds. Enforcement of the 18 age limit would be somewhat easier on all concerned as persons under that age are more easily identified.

But the ultimate argument to the writer centers around military service. I cannot see that the individual who is old enough to fight - and

often to die - for his country can be denied a privilege that those only a few years older, that he is defending, enjoy. Can we not call them adults when we ask of them the ultimate sacrifice? I have been in the service and, although beer and alcoholic beverages are available on all military posts, one naturally has the desire to get away from the military atmosphere during one's leisure time. Bars are not the only places one can go, but they do afford one means of entertainment and recreation. Often, there are very few other places available, such as in Hopkinsville. And so the individual who has been called by society to its defense is thus denied by this same society of the right to participate fully as a member of it.

In summation, then, the legal age of 21 discriminates against an increasingly large percentage of the population - young adults who are expected to be that - young adults - in every other facet of their daily life. In a day when American society and its foundations are being attacked from all sides, remedies should be forthcoming that will encourage its support and respect. This, I feel, is one.

From the same standpoint, we must also face the matter of Sunday sales of alcoholic beverages. All of us know that they are available on Sunday regardless of the area or the law. My proposition is for limited sales, which should be acceptable to all discerning individuals. I propose a realistic look at this matter, shorn of prejudice, hypocrisy, and just plain wishful thinking. Let's face it - people take a drink on Sunday just as they eat food on Sunday. And sending them to back-street bootleggers does not stop the sales. So, once more, a sizeable segment of society is faced with ignoring - thus breaking - a law they do not sympathize with and consider unreasonable and unrealistic.

I ask you this question: Would it not be far better to have open sales of some restriction, yielding appropriate tax revenue and under the control of the authorities? Other states have long ago recognized that this is the best public policy to pursue and they are certainly not worse places in which to live

because of this policy. In Kentucky, the city of Louisville, alone, is allowed the privilege of Sunday sales and this has hardly deterred the growth of Louisville. In fact, it may well have contributed to that growth in that it is a favorable reflection of general local attitude. Kentucky has done remarkably well in attracting industry into the state but might we not have done better without our "Blue Laws" of which this is one? It would appear that if our growth in the future is to match - or exceed - that of the rest of the country, Kentucky must offer to its citizens the same opportunities in modern living that other states offer so that they will be encouraged to remain in this state and contribute to its growth. A reasonable Sunday opening law, with designated hours, allowing sales by certain types of outlets such as package stores, groceries, and private clubs would be a long step in this direction.

My third proposition is the reform or removal of local option laws. It is a basic premise of law that those laws should be fair to all citizens. Yet the local option laws of the state of Kentucky are not fair to all citizens. They are "stacked", so to speak, in favor of the "dry" voter. I refer to the provision of the law which allows a precinct of a wet county to vote dry, but does not allow it to vote wet if the county is dry. In addition, only cities of the first four classes in a county are allowed to vote independently in local option elections. The result is that the smaller cities and all of the precincts of a county must vote together in favor of legal sales in such an election in order to have them anywhere in that county. If the vote is against, the only remedy is to wait three years and petition for another election. But opponents of legal sales can, if a precinct is already wet from a county-wide election, have a separate precinct election in order to vote that precinct dry. Thus with the "wets" it is all or nothing, but the "drys" can usually win in part. Or, to state it another way, the legal rights of those favoring the sale of liquor are less than the legal rights of those opposed to it. I ask, is this fair?

Then there is the broader question of the rights of the minority as against laws such as local option. Today, we read and hear much of civil rights,

which are the rights of a minority group under a majority rule. I do not propose to discuss in detail the Constitutional question posed by local option laws, for to my knowledge, this question has not been brought before the Supreme Court in modern times. But in the light of other Supreme Court decisions of the past decade or so, it would appear to the writer that the whole basis of local-option laws under present Constitutional interpretation, is invalid. For how can a majority of voters in a certain area be permitted to prohibit the sale of a certain type of goods, such as liquor, when the sale of those goods is not in itself illegal? And if liquor, why not other items which they might not like? Clearly, the majority cannot prohibit anything which they do not like. Decisions reflecting race, creed, and religion prove this. And so we must wait for a final decision on this question, whenever a case is brought before the Court. What is your guess as to the result?

Finally, the effect of local option on a community's law enforcement cannot be underestimated. I have already pointed out how Prohibition contributed to the growth of organized crime on a national scale. It can also contribute on a local scale. The local option laws that permit an area to prohibit legal sales only encourage the criminal element to move in and take advantage of the situation. As I have already stated, people are going to purchase liquor, whether such purchases be legal or illegal. If they are illegal, the tax revenue otherwise produced is lost. But far more important is the undermining of local law enforcement officials thru corruption and resultant loss of faith in their integrity by the general public. Any law enforcement official is under constant temptation to permit illegal activities in return for favors by the operators of those activities. One such large activity can be the bootlegging business. And we all know that this business cannot long operate without the protection of the police and their superiors. And their relatively low pay scale invites offers which are hard to resist. Since the illegal sale of liquor can become a big business in a community, the money available for these bribes can be sizeable enough to corrupt the power structure all the way to the top. And it can also bankroll "dry" forces in their

campaign to eliminate legal sales. Many cities and states have learned the hard way that once the criminals' foot is in the door, they soon have control of all governmental machinery, with the public the loser. Recent developments in the state of New Jersey are proof enough of this. We must conclude, then, that the best legal status - and the fairest for everyone - can only be controlled, tax-producing legal sales in every county of every state.

Next, I propose that the retail sale of liquor be removed from political patronage thru the unlimited granting by the state of retail sales licenses in each county. Under the present system of county license allotments, these are one of the juiciest plums available from Frankfort. There must be stringent qualifications for individuals to whom these licenses are granted, to be sure, but political affiliations should play no part in them. ^{and} The present quota system each license takes on a value far above the license fee required by the state. We are all politically sophisticated enough to know where this difference between fee and value goes. The political party in power thus reaps the rewards and to its friends go the available licenses. Is this corruption of party and power or just the old game of "playing politics"? It is entirely possible that the answer would not always be the same. Never-the-less, the change I propose would eliminate much temptation and allow the economic laws of supply and demand to regulate the number of retail outlets.

The fifth area of liquor law reform proposed in this paper refers to the question posed at the beginning of this paper. The individual citizen should be Federally protected in his possession and transportation of alcoholic beverages when they are for his own personal use and not for resale. At the present time, this is not the case. The Federal laws of interstate commerce do not apply to liquor, thus allowing the unsuspecting private citizen to fall prey to local authorities in states he may be traveling thru which have laws making the act of bringing liquor into that state a crime, or the possession of it in dry areas a crime. This country's population today can truly be described as fluid. And since one is not hindered in carrying one's other personal property and possessions

across state lines, the populace can hardly be expected to realize that certain states such as Tennessee prohibit bringing even one half-pint of liquor into their territory - or the possession of that one bottle in legally dry areas. Kentucky does have a reasonable law in this respect, allowing an individual to possess up to three gallons in dry areas. In excess of that quantity, the individual must be able to prove that the liquor is for personal use only. But in Tennessee, the unwary individual is subject not only to a fine but also the confiscation of his liquor. Is this Constitutional? If so, then Federal legislation is urgently needed so that this type of personal property and its owner can be uniformly protected.

In conclusion, it must be stated that there is no area where our attempts to legislate so-called "morality" have produced such a colossal failure as in our liquor control laws. Instead of discouraging drinking, they only seem to have encouraged it. Indeed, the lesson should have been learned some forty-odd years ago in the debacle of prohibition. But the crazy-quilt of state liquor laws are still with us today, providing a moralist umbrella full of holes that can never be plugged! But change will be forthcoming, whether sooner or later, as the mantle of political leadership is passed on to younger generations. For, as the famous folk-singer Bob Dylan stated in one of his finest compositions:

"Come gather 'round people, wherever you roam,
And admit that the waters around you have grown,
And accept it that soon you'll be drenched to the bone,
If your time to you is worth saving,
Then you'd better start swimming, or you'll sink like a stone,
Oh, the Times They Are A'Changing."

Wallace H. Henderson
March 1970