

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by  
the  
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**3199-113. Same—Contributions.**—Any governmental subdivision of the State of Minnesota authorized to expend public moneys for the direct relief of its poor is hereby empowered to contribute to the fund and, for such purpose may borrow money in the manner provided by law for direct relief or social welfare purposes or both. (Act Mar. 28, 1941, c. 98, §6.) [261.206]

**3199-114. Custodians—Surety bonds—Insurance against loss.**—Any person or persons into whose care and custody there comes any cash, stamps or other property used in any federal commodity or commodity stamp plan or program shall post a bond running to the State of Minnesota approved by and in such sum as the board of county commissioners or other governing body of the responsible governmental subdivision or authorized representative agency shall deem adequate protection for all stamps, cash and property in such person's or persons' care and custody. All stamps, cash and property in the possession of any governmental subdivision of the state or any agency thereof shall be insured against loss or deposited with a depository of public funds in the manner provided by law. (Act Mar. 28, 1941, c. 98, §7.) [261.207]

Commodity Stamp Fund should be deposited by stamp issuing officer with depository designated by county welfare board. Op. Atty. Gen. (140A-7), Aug. 8, 1941.

Depositories for commodity stamp funds are to be selected by county welfare boards and approved and bond-

ed in accordance with other statutes dealing with depositories of public funds. Op. Atty. Gen. (140a-7), Dec. 22, 1941.

Officer is not liable to county for loss to county through no fault of officer. Op. Atty. Gen. 45(D), Dec. 21, 1943.

**3199-115. Construction of act.**—This act shall be construed so as to further its purpose which is to enable governmental subdivisions of the State of Minnesota to participate in federal commodity and commodity stamp plans and programs. (Act Mar. 28, 1941, c. 98, §8.) [261.208]

**3199-116. Federal Commodity Stamp Plans—Validating act.**—In all cases in which any county within the State of Minnesota or any agency thereof has created or caused to be created a revolving fund for the acquisition and disposition of federal commodity stamps pursuant to arrangements with the United States Department of Agriculture or any agency thereof and in all cases in which any county, town, city, village or other subdivision of the State of Minnesota or any agency of any one of them has obtained or caused to be obtained commodity stamps for distribution, in lieu of other relief, to the poor, such expenditures, distributions, acquisitions and dispositions and all acts incident and necessary to participation in any such commodity stamp plan are hereby legalized and declared to be valid. (Act Mar. 28, 1941, c. 99, §1.) [647.49]

## CHAPTER 16

### Intoxicating Liquors

#### BEER BILL

#### **3200-5. Municipalities may issue licenses for sale of non-intoxicating beverages.**

Sale of nonintoxicating malt liquors is subject to regulation under police power of state, and delegation to municipal councils of authority to license and regulate sales thereof, is a valid exercise of such power. State v. Ives, 210M141, 297NW563. See Dun. Dig. 1610, 4905.

Ordinance of city of Minneapolis fixing punishment for sale of nonintoxicating malt liquor without a license at a definite term of imprisonment of 90 days in the workhouse is valid. Id. See Dun. Dig. 1661(2).

Where nonintoxicating liquor licensee appeared pursuant to notice before city council without objection and contested proceeding for revocation of license on its merits, he could not question sufficiency of notice or form of charges made against him. State v. City of Alexandria, 210M260, 297NW723. See Dun. Dig. 4919.

Municipal ordinances are not criminal statutes and violations thereof are not crimes, nor governed by rules of criminal law, save in certain specified exceptional particulars. State v. Jamieson, 211M262, 300NW809. See Dun. Dig. 4913.

Permit to drug store in dry territory to sell liquor on prescription is authorized, and does not prevent issuance of 3.2 beer license. Op. Atty. Gen., (218J-3), Sept. 23, 1939.

There is no state law which prohibits a gift of intoxicating liquor or nonintoxicating malt beverages, but it may be argued that a gift of liquor or beer with a meal by a hotel or restaurant would be a mere subterfuge. Op. Atty. Gen., (217), Nov. 4, 1939.

There is no state statute prohibiting granting of license near a public school. Op. Atty. Gen., (217f-1), Dec. 14, 1939.

Town board may limit number of 3.2 beer licenses, but has no right to refuse to approve all applications for licenses without cause. Op. Atty. Gen., (217B-8), Jan. 10, 1940.

Electors of a township do not have right to vote on question of issuing license. Op. Atty. Gen., (218g-9), April 18, 1940.

In absence of any provision requiring mayor to approve or affix his signature to a 3.2 non-intoxicating malt liquor license, it is duty of city clerk to issue license when granted by city council. Op. Atty. Gen. (217-B-4), July 18, 1940.

Town board's authority is limited to approval or disapproval of application, and town board has no right to regulate conduct of licensee's business after a license has been issued by county board, nor can it require

county board to regulate establishment. Op. Atty. Gen. (217B-8), Nov. 22, 1940.

An ordinance regulating sale of nonintoxicating malt liquors may prohibit sales of carbonated beverage or soft drink, excepting therefrom ice cream sodas and malted milk, during hours of sale of malt liquors, and make it a misdemeanor to permit bottles or containers of malt liquors to remain on bars or tables or shelves or fixtures during closing hours, and may make it a misdemeanor for a person to drink malt liquors in a licensed place during closing hours. Op. Atty. Gen. (217C), Nov. 26, 1940.

Authority of city to "regulate" authorizes city to require a \$1000 bond. Op. Atty. Gen. (217C), Jan. 9, 1941.

County board may revoke license after a hearing on a showing that assaults and disorderly conduct have been frequent, though there has been no criminal conviction. Op. Atty. Gen. (217B-9), Oct. 21, 1941.

Distilled, fermented, spirituous or vinous beverages having up to and including 3.2% of alcohol by weight are not regulated by the beer law or the intoxicating liquor law, and may be regulated by municipalities as soft drinks. Op. Atty. Gen. (217), Aug. 6, 1942.

City ordinance prohibiting employment of any person under age of 21 years in places licensed to sell non-intoxicating malt beverages is valid. Op. Atty. Gen. (217F-3), June 30, 1943.

An ordinance providing that a license shall not be issued to a chain store is discriminatory and invalid. Op. Atty. Gen. (217c), July 6, 1943.

County board may not grant a license for a business in an organized township unless the town board had given its consent, and when the town board has given its consent, the determination of whether or not the license is to be granted rests exclusively with the county board. Op. Atty. Gen. (217b-2), July 21, 1943.

A city ordinance prohibiting the serving of beer to a minor under 18 years of age, even though the sale is made to a person over 21 years of age, would be valid. Op. Atty. Gen. (217f-3), July 21, 1943.

County board or governing body of a city or village may require that an on-sale place be closed during prohibited hours. Op. Atty. Gen. (218j-8), Sept. 9, 1943.

Revocation of unintoxicating liquor license and reconsideration of order of revocation. Op. Atty. Gen. (217b-9), Sept. 24, 1943.

**3200-6. Unlawful to sell unless licensed.**—It shall be unlawful to sell non-intoxicating malt liquors, at retail, or wholesale, except when licensed as herein-after provided. There shall be two kinds of licenses, viz:

(a) "On-sale" licenses shall permit the licensee to sell such non-intoxicating malt liquors for consumption on the licensed premises, and the license fee therefor shall be \$10.00 per annum, unless the county, city, village or borough wherein the premises are situated shall fix a higher fee to be paid to such county, city, village or borough. "On-sale" licenses shall be granted only to drug stores, restaurants, and hotels and Bona Fide clubs; provided, however, that no manufacturer or wholesaler of such non-intoxicating malt liquors shall have any ownership, in whole or in part, in the business of any licensee holding an "On-sale" license. A Bona Fide Club under this Act is an organization for social or business purposes or for intellectual improvement, or for the promotion of sports, where the serving of such non-intoxicating malt liquors is incidental and not the major purpose of the Club.

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

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

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

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

(d) Licenses hereunder shall be issued only to persons who are citizens of the United States and who are of good moral character and repute.

(e) No manufacturer or wholesaler shall, directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner thereof, give, lend or advance any money, credit or other thing of value to any retailer or to any person for the benefit or relief of any retailer, nor furnish, give, lend, lease or sell to any person any furniture, fixtures, fittings or equipment; nor shall any manufacturer or wholesaler, directly or indirectly, have any interest in, or pay for, any retail licenses, or advance, furnish, lend or give money for the payment of retail license fees or any expense incident to the obtaining of such license; nor shall any manufacturer or wholesaler become bound in any manner, directly or indirectly, for the repayment of any loan made to, or the fulfillment of any financial obligation of, any retailer; except that manufacturers or wholesalers may: (1) extend to retailers the usual and customary commercial credits for products of the industry actually sold and delivered; (2) furnish to retailers the containers of consumable products of the industry actually sold and delivered and may recover the same, or the value thereof, if such containers are not returned; (3) furnish, lend or rent outside signs to retailers, provided the cost of such signs, in the aggregate, furnish, lent or rented by any manufacturer or wholesaler to any retailer shall not exceed \$100.00 exclusive of erection, installation and repair charges; but nothing herein shall be construed as affecting signs owned and located in the state on the

effective date hereof by any such manufacturer or wholesaler; (4) furnish inside signs, miscellaneous advertising matter and other items not to exceed, in the aggregate, a cost of \$25.00 in any calendar year to any one retailer; (5) furnish or maintain for retailers such equipment as is designed and intended to preserve and maintain the sanitary dispensing of non-intoxicating malt liquors, provided the expense incurred thereby does not exceed the sum of \$25.00 per tap per calendar year, no part of which shall be paid in cash to any retailer; (6) acquire within ten days after the effective date hereof any furniture, fixtures, fittings and equipment, or any valid lien thereon or interest therein, which were actually installed on the premises of any retailer prior to the effective date hereof; (7) lease or lend to the owner of premises, or to any retailer now or hereafter occupying the premises, any furniture, fixtures, fittings and equipment actually located on said premises on the effective date hereof. Any such manufacturer or wholesaler who, within ten days after the effective date hereof, owns any furniture, fixtures, fittings or equipment in possession of any retailer on the effective date hereof may, within 90 days after said effective date, sell the same to such retailer only for cash on delivery and deliver a bill of sale to the same.

(f) No manufacturer or wholesaler shall hereafter, directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner enter into any agreement, oral or written, whether or not incorporated in any chattel mortgage, conditional sales contract, bill of sale, lease, land contract, mortgage, deed or other instrument, wherein and whereby any retailer is required to purchase the non-intoxicating malt liquor of any manufacturer to the exclusion, in whole or in part, of the products of other manufacturers.

(g) Any retailer who shall be a party to any violation of subsection (e) or subsection (f), or who shall receive the benefits thereof, shall be equally guilty of a violation of the provisions thereof and shall be subject to the penalty hereinafter provided.

(h) Any person who shall violate the provisions of subsection (e) or subsection (f) hereof shall be guilty of a gross misdemeanor and each violation shall constitute a separate offense. (As amended Act Apr. 16, 1943, c. 459, §1.)

License was properly revoked where licensee permitted whiskey to be sold in place of business by a bootlegger and furnished soft drinks for mixing purposes at double prices. *State v. City of Alexandria*, 210M260, 297NW723. See *Dun. Dig.* 4919.

Evidence held insufficient to sustain a conviction of a grocer, licensed to sell beer in bottles for consumption off the premises, for sale of beer for consumption on premises. *State v. Oelschlager*, 212M485, 4NW(2d)102. See *Dun. Dig.* 4920.

Village council may not charge a fee in excess of \$5.00 for an "off-sale" license. *Op. Atty. Gen.*, (217c), Dec. 18, 1939.

Whether county agricultural society, or county fair association, is eligible for an "off sale" malt liquor license is a question of fact to be decided by village council. *Op. Atty. Gen.*, (218J-1), March 29, 1940.

There is no statute authorizing a search warrant for places selling 3.2 beer without a license. *Op. Atty. Gen.* (218f-3), May 28, 1940.

Sale of 3.2 beer without a license may be restrained by injunction as a nuisance. *Id.*

On sale licenses for non-intoxicating liquor may be issued to persons who already have on sale hard liquor establishment, but they must be drug stores, restaurants, hotels, or bona fide clubs. *Op. Atty. Gen.* (217B-5), June 8, 1940.

License fee may not be refunded on transfer of business or surrender of license. *Op. Atty. Gen.* (217b-6), July 6, 1940.

Non-intoxicating malt liquor licenses are not transferable. *Id.*

When son of hotel owner leases and operates dining room in connection with hotel but with a separate outside entrance and operates it independently of hotel, son may sell bottled beer to guests of hotel under an off sale license restricted to dining room or restaurant. *Op. Atty. Gen.* (217f-2), July 17, 1940.

Clause "for consumption off the premises", refers to particular place that applicant had leased on fair grounds as a concession and not the entire fair grounds. *Op. Atty. Gen.* (217-B-4), July 18, 1940.

While a beer license cannot be transferred from one holder to another, it may be transferred from one location to another, with approval of governing bodies which approved original application. Op. Atty. Gen. (217B-6), Sept. 16, 1940.

Every license should state a definite description of the place of business. Id.

License to sell beer at a certain place does not authorize licensee to sell it at another place, and where licensee is unable to renew his lease on licensed premises and another person applies for a license to sell at that place, council should not issue a license to the new applicant until there has been a transfer or an amendment of earlier license, surrender and vacation of licensed premises by licensee not of itself automatically revoking license. Op. Atty. Gen. (217B-6), Sept. 19, 1940.

An unincorporated group, such as a local branch of the Veterans of Foreign Wars which maintains no quarters, might qualify for a license as a club, but cannot sell intoxicating liquors. Op. Atty. Gen. (218G-15), Oct. 9, 1940.

A restaurant is a place where ample portions of well prepared food are served at reasonable prices, and a lunch business conducted in a grocery store in good faith might constitute a "restaurant." Op. Atty. Gen. (217B-5), Feb. 14, 1941.

An exclusive liquor store as defined by city ordinance could not sell non-intoxicating malt beverages without obtaining a non-intoxicating malt liquor license. Op. Atty. Gen. (218g-13), Mar. 3, 1941.

Commissioner of conservation may sell 3.2 beer in state park, but should secure a license from county and a federal retail dealer's malt liquor stamp for each place of business, but should not be required to give a bond. Op. Atty. Gen. (217f-1), May 6, 1941.

Member of village council may obtain a license for sale of 3.2 liquors, but probably should not vote upon his own application. Op. Atty. Gen. (217B-7), Aug. 6, 1941.

It is not every sale of fixtures which is prohibited, but every sale is prohibited which is directly, or indirectly or through a third person to a retailer. Op. Atty. Gen. (218j-11), May 25, 1943.

Mayor of a city may refuse to sign licenses to persons who have been convicted of violation of intoxicating liquor laws if ordinance so provide, but whether a person is of "good moral character and repute" after he has been convicted of such crimes is a question of fact which only a court can answer. Op. Atty. Gen. (217b-1), June 18, 1943.

Soft drink license permits sale of malt liquor containing less than one-half of 1% of alcohol. Op. Atty. Gen. (217c), July 8, 1943.

(b). Grocer doing business in one village and having an off-sale 3.2 beer license may not deliver beer with an order in a nearby village. Op. Atty. Gen., (218J-5), Oct. 25, 1939.

(c). A private organization cannot assume handling and sale for profit of non-intoxicating malt beverages on railroad trains chartered by such organization although latter has no license covering such sale. Op. Atty. Gen., (218g-2), March 7, 1940.

Manufacturer may make sales in quantities of two gallons or more to consumers, or in any quantity to licensed dealers, in a municipality without first securing a license from that municipality, and in a municipality where no ordinance is in effect providing for granting of licenses, or when no licenses have been granted, manufacturer can sell to consumers but not to retailers. Op. Atty. Gen. (217H), Oct. 1, 1941.

### 3200-7. Unlawful to sell to persons under 21 years of age.

Section 4111-1 is the only statute bearing on question of prohibiting employment of a minor under 18 years of age in 3.2 beer establishments, and fact that minor is child of owner is immaterial. Op. Atty. Gen., (218J-12), April 3, 1940.

Whether or not a sale of beer to a minor by an employee is act of licensee so as to render him guilty of violating act depends on whether or not licensee had knowledge of or consented to such a sale, which is a fact question. Op. Atty. Gen. (217b-9) May 13, 1941.

City ordinance prohibiting employment of any person under age of 21 years in places licensed to sell non-intoxicating malt beverages is valid. Op. Atty. Gen. (217f-3), June 30, 1943.

If the place is not injurious to morals, there is no statute which prohibits employment of minors over the age of 18 years but under 21 years in a restaurant, the chief business of which is serving food, unless the restaurant has in connection therewith other activities as to which the presence of minors is prohibited, though non-intoxicating malt liquor is sold. Op. Atty. Gen. (217f-3), July 14, 1943.

A city ordinance prohibiting the serving of beer to a minor under 18 years of age, even though the sale is made to a person over 21 years of age, would be valid. Op. Atty. Gen. (217f-3), July 21, 1943.

"Near beer" of one-half of 1% of alcohol may not be sold to minors. Op. Atty. Gen. (217f-3), Aug. 12, 1943.

### 3200-8. Duration of licenses.—All licenses for the sale of non-intoxicating malt liquors shall be issued

for a period of one year, except that for the purpose of coordinating the time of expiration of licenses in general, such licenses may be issued for a shorter time to expire at a given period of the year in which case a pro rata fee shall be charged; provided, however, that in all counties of this state having a population of over 14,000 and less than 15,000 inhabitants, according to 1940 census and containing not less than 20 and not more than 25 full and fractional congressional townships, all licenses for the sale of non-intoxicating malt liquors may be issued for a period of less than one year. (As amended Act Apr. 28, 1941, c. 502, §1.)

Act Apr. 28, 1941, c. 502, §2, provides that nothing herein contained or omissions shall be construed as repealing any prior amendments to the foregoing sections by the 1941 session of the legislature.

Any license issued to a club must be for a full period of one year, as there is no provision for issuing a license for a shorter period. Op. Atty. Gen., (218J-1), March 29, 1940.

City passing ordinance reducing license could make no refund to persons purchasing licenses prior thereto and paying the old license fee under a promise that there would be a new ordinance reducing the fee for the year with a consequent refundment. Op. Atty. Gen. (217c), June 2, 1941.

Village council may not refund any part of license fee in case of destruction of a building by fire, or otherwise. Op. Atty. Gen. (217b-6), June 10, 1941.

### 3200-9. Penalty for violation.

Where there has been continuous and persistent violations of liquor and gambling statutes and repeated convictions have failed to abate them an injunction is properly granted to abate a "public nuisance." State v. Sportsmen's Country Club, 214M151, 7NW(2d)495. See Dun. Dig. 4947a.

### 3200-10. Repeal; non-intoxicating malt liquors excluded.

This section, or rather new definition of intoxicating liquors, modifies statute prohibiting possession of malt liquors in school buildings or upon school grounds. Op. Atty. Gen. (622a-13), Mar. 4, 1941.

### 3200-10b. Municipalities may not extend closing hours.

Village ordinance requiring all places licensed to sell nonintoxicating malt liquors to close their stores between 1 a. m. and 6 a. m. is valid. Op. Atty. Gen. (218j-8), Mar. 28, 1941.

### 3200-10c Violations.

Licenses are revocable only by violation of law, and surrender and vacation of licensed premises by licensee does not in and of itself automatically revoke a license. Op. Atty. Gen. (217B-6), Sept. 19, 1940.

Form of complaint prescribed by attorney general. Op. Atty. Gen. (217F), Aug. 11, 1941.

County board may revoke license after a hearing on a showing that assaults and disorderly conduct have been frequent, though there has been no criminal conviction. Op. Atty. Gen. (217B-9), Oct. 21, 1941.

## LIQUOR CONTROL ACT

### 3200-21. Construction of terms.

#### 1. In general.

Six per cent beer may not be stored in dry county. Op. Atty. Gen., (218o), April 8, 1940.

Distilled, fermented, spirituous or vinous beverages having up to and including 3.2% of alcohol by weight are not regulated by the beer law or the intoxicating liquor law, and may be regulated by municipalities as soft drinks. Op. Atty. Gen. (217), Aug. 6, 1942.

If ethyl alcohol is to be manufactured in good faith for and is used for non-beverage purposes, that is, for medicinal, mechanical, chemical, scientific, pharmaceutical or industrial purposes, manufacturer need not obtain license. Op. Atty. Gen. (218g-4), Sept. 8, 1942.

#### 2. Off sale.

A corporation operating a public golf course violated law by selling liquor to patrons of golf course from a room accessible only from an outside door, where it was known that purchasers would take liquor into another door of same building and there consume it, entire building being "premises" of the seller. Op. Atty. Gen. (218G-15), Feb. 24, 1942.

#### 3. Exclusive liquor store.

City has no authority to donate money to Red Cross from profits of liquor store. Op. Atty. Gen., (59a-22), Nov. 1, 1939.

Mayor of village cannot hire or discharge municipal liquor store employees contrary to objection of majority of council. Op. Atty. Gen., (353a-3), Feb. 1, 1940.

Establishment of a municipal liquor store is a matter for council to determine, and election cannot be called therefor. Op. Atty. Gen., (218G-13), Feb. 10, 1940.

A village located in a dry county but on county line may buy adjoining land in other county and establish a

municipal liquor store there. Op. Atty. Gen., (484E-1), March 2, 1940.

Establishment of a municipal liquor store rests entirely within discretion of council and voters have nothing whatever to say about it. Op. Atty. Gen., (218G-13), March 19, 1940.

Funds of a municipal liquor store belong to the city and contributions may not be made to Red Cross or to any private charity, and store may not become a member in a local civic and commerce association or make appropriation to a fund to be used in attracting conventions to the city, though it may expend money for advertising in local papers, including directories and other advertising mediums. Op. Atty. Gen., (218E), April 20, 1940.

A municipal liquor store cannot be established in a city of the third class by city charter or otherwise. Op. Atty. Gen. (218G-13), Sept. 6, 1940.

Municipal liquor store may not be established until outstanding private licenses have expired, and first step is adoption of an ordinance establishing such a store and it is not necessary to put proposition up to voters, and expenditures of store must be approved by council and paid as are other village expenditures. Op. Atty. Gen. (218J-10), Nov. 23, 1940.

In absence of prohibitive charter provision authority to operate a municipal liquor store carries with it authority to incur usual costs and expenses, including advertising, but advertising must comply with rules of commission as in case of private stores. Id.

City may pay expenses of council liquor committee and manager of municipal liquor store attending Minnesota Municipal Liquor Stores Convention, within reasonable limits. Op. Atty. Gen. (218R), Dec. 6, 1940.

Village recorder cannot be appointed manager of municipal liquor store. Op. Atty. Gen. (218g-13), Dec. 17, 1940.

A member of village council may not lawfully act as manager of a municipal liquor store, and council is under no obligation to appoint a bookkeeper, and if village recorder is willing to do the work, there is no reason for appointment of any one else, and raising salary of recorder by reason thereof would not constitute violation of law forbidding public officers from being interested in contract. Op. Atty. Gen. (470g), Jan. 15, 1941.

Council of village organized under 1905 Act in buying certain brands of liquor for municipal liquor store from wholesale dealers need not advertise for bids. Op. Atty. Gen. (707a-15), Feb. 6, 1941.

An exclusive liquor store keeping bottled soft drink beverages on premises in cooler need not obtain a refreshment license, such soft drinks generally being carried away by customer to his home to be mixed. Op. Atty. Gen. (238g), May 26, 1941.

If village votes "against license," it becomes a "dry village" and can no longer operate a municipal liquor store. In a "wet village" it is for council to decide whether to operate a municipal store or issue private licenses. Op. Atty. Gen. (218c-3), Dec. 9, 1941.

Municipal liquor stores should not begin operations until all outstanding licenses have expired. Op. Atty. Gen. (218g-13), Apr. 7, 1942.

Manager of municipal liquor store may not be paid part of profits in lieu of salary. Id.

Stock of a municipal liquor store is not subject to tax. Id.

Cost of acquisition of land and erection of a suitable building may be made a charge upon profits of operation of municipal liquor store, provided property is deeded to village at once in fee simple, and is not a conditional sale reserving title as security, but this would not be true if property was obtained by eminent domain in which case award must be paid. Op. Atty. Gen. (218r), Apr. 10, 1942.

Any village may exercise power of eminent domain for purpose of acquiring a site for a municipal liquor store building, and without a vote of electors unless bonds are to be issued. Id.

City council is not required to submit question of continuing municipal liquor store to the voters. Op. Atty. Gen. (218g-13), March 20, 1943.

Village council may purchase land to be used as a site for a municipal liquor store. Op. Atty. Gen. (218r), Aug. 19, 1943.

Village may purchase land and building on it for liquor store. Op. Atty. Gen. (218r), Aug. 20, 1943.

#### 7. Club.

An unincorporated group, such as a local branch of the Veterans of Foreign Wars which maintains no quarters, is not eligible to a license to sell intoxicating liquors as a club. Op. Atty. Gen. (218G-15), Oct. 9, 1940.

A club may not sell intoxicating liquor to its members unless it has a local license as well as a federal permit, and clubs may not be licensed outside the limits of any city, village or borough. Op. Atty. Gen. (218g-15), Sept. 3, 1943.

#### 3200-23. Office of commissioner—Appointment and qualifications—Removal—Salary—Bond.

Inspectors and investigators have implied power to do all things necessary to enforce all of the provisions of the act, including right to inspect all premises of licensee, all stock of liquors to see that tax thereon is paid, to investigate and suppress illegal sales, but they have only such powers of arrest as law gives to private persons,

who may arrest when a crime of any kind is committed or attempted in their presence at any time of day or night without a warrant, and may use such force as is reasonable to secure and detain the offender, and may arrest for a felony without a warrant upon reasonable cause for believing that person arrested committed it. Op. Atty. Gen., (218h-3), Sept. 6, 1939.

Manifests and monthly reports submitted by wholesaler to office of liquor control commissioner are not records which public have right to inspect. Op. Atty. Gen., (218h-5), Oct. 31, 1939.

A manufacturer or wholesaler of beer or liquor may refuse to sell products to a licensed retail dealer for cash, but commission has authority to make a regulation requiring sale of products to all licensed dealers. Op. Atty. Gen., (218J-11), Dec. 7, 1939.

Violation of regulation of commissioner prohibiting sale of alcohol would be a misdemeanor. Op. Atty. Gen. (218f), Sept. 12, 1940.

**3200-25. Licenses.**—That it shall be unlawful for any person, directly or indirectly, upon any pretense or by any device, to manufacture, import, sell, exchange, barter, dispose of or keep for sale, any intoxicating liquor, without first having obtained a license therefor, as herein provided. Nothing herein shall prohibit the natural fermentation of fruit juices in the home for family use. All manufacturer's and wholesaler's licenses shall include the right to import and shall be granted by the Liquor Control Commissioner. The business of manufacturer and wholesaler may be combined and carried on under one license issued therefor. All licenses for retail "Off sale" shall be granted by the local governing body subject to the approval of the Liquor Control Commissioner and shall not become effective until so approved.

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

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

All "On sale" licenses shall be granted and the annual license fee therefor fixed by the respective local governing bodies of the various political subdivisions of the state, and such governing bodies shall have the right to revoke licenses issued by them, for cause. No "On sale" license shall be issued contrary to any of the provisions of Sections 3200-21 to 3200-56. Not more than one "On sale" license shall be issued in any city of the first class for every 1,500 inhabitants; provided, however, notwithstanding said limitation any city of the first class in which licenses have heretofore been issued upon an estimated population computed upon the increase in population in said city between the federal census of 1920 and the federal census of 1930, or where the 1940 federal census shows a decrease from the 1930 census and as a result thereof "On sale" licenses have been issued in excess of one for every 1,500 inhabitants as determined by the federal census of 1940, said city of the first class may continue to issue the number of "On sale" licenses which said city issued in the year 1940. Not

more than 200 "On sale" licenses shall be issued in any city of the first class. Not more than 15 "On sale" licenses shall be issued in any city of the second class. Provided, however, that "On sale" licenses may be issued, except in cities of the first class, in addition to the limitations as herein provided, to bona fide clubs in existence for 20 years which are duly incorporated and which licenses shall be for the sale of intoxicating liquors to members only for a license fee of \$100.00. Not more than 10 "On sale" licenses shall be issued in any city of the third class. Not more than 5 "On sale" licenses shall be issued in any city of the fourth class, or boroughs. Not more than 10 "On sale" licenses shall be issued in any village of over 10,000 population. Not more than 5 "On sale" licenses shall be issued in any village of 5,000 to 10,000 population. Not more than 4 "On sale" licenses shall be issued in any village of 2,250 to 5,000 population; provided, that in determining the population of any such village there shall be included therein the population of any township which was formerly a portion of such village and which was separated therefrom subsequent to the year 1935. Not more than 3 "On sale" licenses shall be issued in any village of 500 to 2,500 population. Not more than 2 "On sale" licenses shall be issued in any village of less than 500 population. Provided, however, that in cities of the fourth class containing a population of more than 5,000 situated in counties containing not less than 20,000 nor more than 25,000 inhabitants according to the 1930 federal census, and containing not less than 20 nor more than 21 full and fractional congressional townships, 10 "On sale" licenses may be issued. Provided, however, that in any city of the fourth class, operating under a home rule charter, having a population in excess of 7,500 persons, located in a county having not less than 29 nor more than 30 full and fractional townships with an assessed valuation in excess of \$10,000,000, exclusive of moneys and credits, and having a population in excess of 23,000 inhabitants according to the last federal census, the council may issue one "On sale" license for every 800 inhabitants or fraction thereof. Provided, further, that in any city of the fourth class, organized under any general or special law and having a population of not less than 500 nor more than 1,000, excepting, however, any city of the fourth class governed under a home rule charter adopted pursuant to Section 36, Article 4, of the state constitution, not more than 3 "Off sale" licenses may be issued therein. Provided, however, that in any city of the fourth class operating under a home rule charter, having a population exceeding 4,000 and not more than 4,500 inhabitants, according to the 1940 federal census, located in a county containing not less than 12 nor more than 13 townships, there may be issued in addition to the five "On sale" licenses herein provided for, only one "On sale" license to an hotel which operates a dining room serving meals regularly and which contains not less than forty sleeping rooms. In counties having an area of more than 5,000 square miles, if the Liquor Control Commissioner also approves, the governing body in cities of the third class may grant 15 such licenses and in cities of the fourth class may issue 9 such licenses and in villages having a population of more than 2,500 and less than 5,000, six such licenses. In cities of the fourth class situated in any county in this state having not less than 100 nor more than 110 full and fractional congressional townships and having a population of not less than 13,000 nor more than 15,000 inhabitants according to the last federal census, the number of "On sale" licenses shall be determined by the governing body thereof, and where such a city is operating a municipal liquor store at "Off sale" only. "On sale" licenses may be granted to hotels, clubs, restaurants and exclusive liquor stores. "On sale" licenses may be issued for the sale of intoxicating liquors in hotels, clubs and restaurants in cities of the first, second and third class and vil-

lages of over 10,000 inhabitants. Such licenses may be issued in cities of the fourth class, and other villages and boroughs for such sale of intoxicating liquor in hotels, clubs and/or exclusive liquor stores, which exclusive liquor stores the governing body of such municipalities may establish or permit to be established for dispensation of liquor either "On sale" or "Off sale," or both. In cities and villages having over 5,000 and not more than 10,000 population, the municipality may license "On sale" in restaurants in lieu of the establishment of exclusive liquor stores.

In cities of the first class not more than one "Off sale" license shall be granted for every 5,000 inhabitants in any such city; provided, however, notwithstanding said limitation, any city of the first class in which "Off sale" licenses have heretofore been issued upon an estimated population computed upon the increase in population in said city between the federal census of 1920 and the federal census of 1930, or where the 1940 federal census shows a decrease from the 1930 census and as a result of such computation "Off sale" licenses have been issued in excess of one for every 5,000 inhabitants as determined by the federal census of 1940, said city of the first class may continue to issue the number of "Off sale" licenses which said city issued for 1940. In such cities, such licenses shall be issued only to proprietors of drug stores, general food stores and exclusive liquor stores. In all other cities, villages and boroughs, the number of "Off sale" licenses to be issued therein shall be determined by the local governing body. In all cities, villages and boroughs other than cities of the first class "Off sale" licenses shall be issued only to proprietors of drug stores and exclusive liquor stores. Not more than one "Off sale" license shall be issued to any city, village or borough of less than 1,000 population.

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

(a) Any manufacturer, as herein defined, shall pay to the state, an annual license fee in the sum of \$2,500.00, except that brewers of intoxicating malt beverages shall pay to the state an annual license fee of \$500.00, and except that a manufacturer of wines containing not more than 25 per cent of alcohol by weight shall pay to the state an annual license fee of \$250.00.

(b) Any wholesaler, as herein defined, shall pay to the state an annual license fee in the sum of \$2,500.00, except that wholesalers of wine containing not more than 25 per cent of alcohol by weight and wholesalers of beer containing more than 3.2 per cent of alcohol by weight, shall pay to the state an annual license fee of \$250.00.

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

Provided, however, that in any city or village which has established a municipal "Off sale" liquor store since January 1, 1940, any duly organized club which prior to January 1, 1940, held a club license, either under this section or pursuant to chapter 154, Laws 1939, shall be entitled to a new "On sale" license, notwithstanding the provisions herein contained.

Nothing herein contained or omissions shall be construed as repealing any prior amendments to the foregoing section by the 1941 session of the legislature.

No license for the sale of intoxicating liquor shall be issued by any newly incorporated village, until the expiration of two years from the date of incorporation. (As amended Jan. 31, 1941, c. 4, §1; Feb. 27, 1941, c. 34, §1; Apr. 22, 1941, c. 359, §1; Apr. 28, 1941, c. 485, §1; Apr. 19, 1943, c. 501, §1; Apr. 24, 1943, c. 599, §1.)

This section was amended by Act Jan. 31, 1941, c. 4, §1, by Act Feb. 27, 1941, c. 34, §1, by Act Apr. 22, 1941, c. 359, §1; and by Act Apr. 28, 1941, c. 485, §1. Such amendments were not inconsistent with each other and all are incorporated in the above section.

#### 1. In general.

In prosecution for sale of intoxicating liquor without a license wherein it appeared that bottle purchased was not produced at trial and witness testified that it was accidentally broken and contents spilled, there was no error in permitting testimony as to labels and stamps upon bottle when sold, nor as to odor of contents. *State v. Russell*, 209M488, 296NW575. See Dun. Dig. 4945.

Formal part of a complaint for sale of intoxicating liquors without a license prescribed. *Op. Atty. Gen.*, (218f), Oct. 18, 1939.

Possession of liquor for purposes of sale without a license is a misdemeanor, and finding of liquor under search warrant is prima facie evidence that it is kept for unlawful purpose of sale. *Op. Atty. Gen.* (133B-40), June 18, 1940.

Licenses may be transferred by governing body subject to approval of liquor control commissioner. *Op. Atty. Gen.* (217b-6), July 6, 1940.

License fee may not be refunded on transfer of business or surrender of license. *Id.*

An unincorporated group, such as a local branch of the Veterans of Foreign Wars which maintains no quarters, is not eligible to a license to sell intoxicating liquors as a club. *Op. Atty. Gen.* (218G-15), Oct. 9, 1940.

License should not be issued for less than one year, unless purpose is to bring it to same expiration date as other licenses. *Op. Atty. Gen.* (218g), Apr. 24, 1941.

An action may be maintained for the abatement by injunction of a beer tavern guilty of continuous and persistent violation by selling intoxicating liquor without a license. *Op. Atty. Gen.* (218f), May 24, 1943.

If city council suspends a license for 30 days, state control commissioner has right to cancel identification card for the same period. *Op. Atty. Gen.* (218H-3), Dec. 9, 1943.

#### 2. Necessity of license.

Evidence held to sustain conviction for sale of liquor without a license in violation of city ordinance. *State v. Russell*, 209M488, 296NW575. See Dun. Dig. 4920.

If there is no consumption of beverages on premises, it is not necessary for off sale licensee to obtain a refreshment license from division of hotel inspection. *Op. Atty. Gen.*, (238f), Oct. 23, 1939.

A club cannot sell liquor to members without a license, and may not obtain a license in a city where there is a municipally owned exclusive liquor store. *Op. Atty. Gen.* (218g-15), Feb. 17, 1941.

Evidence sustained conviction for selling intoxicating liquor without a license in violation of Minneapolis ordinance. *State v. Hope*, 212M319, 3NW(2d)499. See Dun. Dig. 4920.

Evidence sustained conviction of sale of intoxicating liquor without a license. *State v. Davis*, 212M608, 3NW(2d)677. See Dun. Dig. 4920.

Evidence sustained conviction for selling intoxicating liquor without a license in violation of city ordinance. *State v. Ronnenberg*, 214M272, 7NW(2d)769. See Dun. Dig. 4920.

Large amount of liquor found in apartment by officers permitted an inference that it was kept there for purposes of sale rather than for use by occupant. *Id.* See Dun. Dig. 4946.

Officer of corporation in full management of a drug store owned by the corporation was criminally liable for act of an employee of the corporation in selling intoxicating liquor in his absence, if he knew that liquor was kept for sale and had full control and supervision over the employee, and was attempting to use corporate legal entity as a shield of protection for himself in his unlawful activity of selling liquor. *State v. McBride*, 215M123, 9NW(2d)416. See Dun. Dig. 4919a.

In prosecutions of manager of drug store and employee selling intoxicating liquor without a license in violation of a city ordinance, evidence held sufficient to sustain conviction of both defendants. *Id.* See Dun. Dig. 4946.

All who participate directly or as accessories in the violation of a municipal ordinance prohibiting the keeping for sale of intoxicating liquor are principals. *Id.* See Dun. Dig. 4919a.

Under an ordinance prohibiting sale of intoxicating liquor without a license, a sale includes having liquor in possession for the purpose of sale. *Id.* See Dun. Dig. 4919b.

Evidence sustained the conviction of manager of drug store for sale of intoxicating liquor without a license in violation of a city ordinance, though sale in question was made by an employee in the store. *Id.* See Dun. Dig. 4920.

The finding of a large quantity of liquor upon premises where there is no license to sell permits an inference that it was there for the purpose of sale rather than for

the use of the occupant, and this was true as to unlicensed pharmacist in an unlicensed drugstore. *Id.* See Dun. Dig. 4946.

Evidence sustains conviction of having intoxicating liquor in possession for sale without a license in violation of an ordinance. *State v. Capito*, 215M320, 9NW(2d)734. See Dun. Dig. 4919d.

Six cases of assorted liquor found in defendant's car permitted an inference that it was kept there for purposes of sale rather than for use by the defendant. *Id.* See Dun. Dig. 4946.

Liquor dealer with an "on sale" but no "off sale" license may make a gift of a bottle of liquor to a customer. *Op. Atty. Gen.* (218), Oct. 28, 1941.

A club may not sell intoxicating liquor to its members unless it has a local license as well as a federal permit, and clubs may not be licensed outside the limits of any city, village or borough. *Op. Atty. Gen.* (218g-15), Sept. 3, 1943.

#### 3. Powers of municipalities in general.

Provision in a liquor ordinance that "all requirements and provisions of the state laws concerning sale of intoxicating liquors are hereby incorporated into and made a part of this ordinance" is valid. *Op. Atty. Gen.*, (62a), Feb. 1, 1940.

Revocation of license is mandatory where violation of statutes is wilful, otherwise revocation is discretionary, and violation by an employee would be discretionary unless licensee himself had knowledge of act and consented to or acquiesced in it, and there should be a hearing whether or not there has been a conviction for a violation. *Op. Atty. Gen.* (218G-14), April 8, 1940.

Where city ordinance prohibits transfer of a license, council cannot authorize or consent to transfer of license to purchaser of business. *Op. Atty. Gen.* (218G-10), Sept. 13, 1940.

Revocation of a license for cause requires a hearing, but an application for a renewal may be denied without any hearing. *Op. Atty. Gen.* (218g-5), Jan. 15, 1941.

Under Laws 1941, providing that no license should be issued by any newly incorporated village until expiration of 2 years from date of incorporation, a village incorporated within 2 years prior to amendment may not issue licenses after passage of act, but a license obtained prior to effective date of amendment was not nullified. *Op. Atty. Gen.* (218g-11), Mar. 11, 1941.

Laws 1941, c. 34, amending this section, forbid village incorporated for less than two years from establishing a municipal liquor store. *Op. Atty. Gen.* (218g-13), Apr. 23, 1941.

City council granting a liquor license may revoke its action before it has been acted on by the liquor control commissioner. *Op. Atty. Gen.* (218g-6), June 24, 1941.

City may adopt ordinance forbidding employment of women as barmaids or bartenders, and it would seem that female owner could so act. *Op. Atty. Gen.* (498a), Dec. 16, 1941.

A city may not donate municipal funds derived from its operation of a municipal liquor store to the Red Cross, or to any private charity, and, though it may advertise, it may not make a donation under the guise of advertising. *Op. Atty. Gen.* (218E), Feb. 10, 1942.

Surplus in village treasury derived from operation of a municipally owned exclusive liquor store should be handled as are other village funds. *Op. Atty. Gen.* (218R), Mar. 3, 1942.

Councilman holding liquor license is ineligible to vote on establishment of municipal liquor store. *Op. Atty. Gen.* (218G-13), Mar. 6, 1942.

Distilled, fermented, spirituous or vinous beverages having up to and including 3.2% of alcohol by weight are not regulated by the beer law or the intoxicating liquor law, and may be regulated by municipalities as soft drinks. *Op. Atty. Gen.* (217), Aug. 6, 1942.

Clubs may be licensed to sell intoxicating liquor although there is a municipal liquor store, and although council cannot be compelled to issue liquor licenses, it cannot arbitrarily refuse, and reasonable regulations can be made by council, including unscreened and uncurtained windows. *Op. Atty. Gen.* (218g-15), Feb. 20, 1943.

License fee may be made payable in installments in advance, but must be on an annual basis. *Op. Atty. Gen.* (218g-6), May 11, 1943.

City operating municipal liquor store may ration liquor, selling one bottle per week only to those living within the city and immediate vicinity. *Op. Atty. Gen.* (218j-10), Oct. 4, 1943.

City may suspend license for 30 days where licensee makes a sale to a minor without wilful intent, but in case of wilful sale revocation of license is mandatory and licensee is not eligible for another license for 5 years. *Op. Atty. Gen.* (218H-3), Dec. 9, 1943.

#### 4. Sale of 3.2% beer.

On sale licenses for non-intoxicating liquor may be issued to persons who already have on sale hard liquor establishment, but they must be drug stores, restaurants, hotels, or bona fide clubs. *Op. Atty. Gen.* (217B-5), June 8, 1940.

An exclusive liquor store as defined by city ordinance could not sell non-intoxicating malt beverages without obtaining a non-intoxicating malt liquor license. *Op. Atty. Gen.* (218g-13), Mar. 3, 1941.

If premises covered by non-intoxicating malt liquor license are different premises from those for which an off-



sale intoxicating liquor license is asked, statute does not apply. Op. Atty. Gen. (218g-5), Sept. 17, 1943.

**5. To whom licenses may be issued.**

An ordinance restricting issuance of licenses to residents would be valid. Op. Atty. Gen. (218G-1), Aug. 20, 1941.

Village councilman is not eligible to receive liquor license. Op. Atty. Gen. (218G-13), Mar. 6, 1942.

Member of Water & Light Commission may not be granted liquor license in the city of Moorhead, since execution of necessary bond would involve a contract between an officer and the city in violation of charter. Op. Atty. Gen. (218g), May 21, 1943.

**6. Limitation of number of licenses.**

In any city of the fourth class not contiguous to a city of the first class, operating under a home rule charter, having a population exceeding 5,000 according to the last federal census, located in a county containing not less than 38,000 nor more than 42,000 inhabitants, according to the last federal census and containing not less than 24, nor more than 25, full and fractional congressional townships, there may be issued, in addition to the "On-sale" licenses provided in Mason's Supplement 1940, Section 3200-25, as amended, one "On-sale" license to an hotel which operates a dining room serving meals regularly and which contains not less than 50 sleeping rooms; provided, that upon the expiration of the "On-sale" liquor licenses heretofore issued by such city of the fourth class, that no more than four thereof in addition to the license authorized by this Act may be thereafter issued by such city. Laws 1943, c. 429, §1.

If licenses issued to clubs are general on-sale licenses for sale to the public or to any one other than club members, they must be counted in limit placed upon "on-sale" licenses, unless clubs are willing to surrender them and accept special club license permitting sale to members only. Op. Atty. Gen. (218g-6), Nov. 27, 1939.

Computation of population of cities or villages for purpose of determining number of liquor licenses is governed by last official state or federal census, and no effect may be given a private census. Op. Atty. Gen., (218g-1), Feb. 6, 1940.

Club license, assuming that liquor is sold to club members only, may be excluded in computing on sale license. Op. Atty. Gen. (218-G-6), June 4, 1940.

An on-sale license issued to a club for sale of liquor to general public must be counted in limitation of on-sale licenses. Op. Atty. Gen. (218G-15), Aug. 14, 1940.

A club cannot sell liquor to members without a license, any may not obtain a license in a city where there is a municipally owned exclusive liquor store. Op. Atty. Gen. (218g-15), Feb. 17, 1941.

Club licenses are not included in number limited by statute in a village of less than 500 population. Op. Atty. Gen. (218g-15), May 1, 1941.

Village of Sartell with 532 inhabitants is limited to three "on sale" licenses and one "off sale" license. Op. Atty. Gen. (218g-11), Nov. 28, 1941.

A village of 560 may issue only one "off-sale" license. Op. Atty. Gen. (218g-5), Apr. 27, 1942.

General licenses issued to club must be counted in determining number of on-sale licenses a city may issue, unless such licenses restrict sale to club members only. Op. Atty. Gen. (218g-15), May 7, 1942.

Population is to be determined by the last preceding state or federal census. Op. Atty. Gen. (218g-6), July 31, 1942.

Club licenses must be counted in determining the number of on sale licenses which a village may issue, unless the license restricts the sale to members of the club only, and unless the club otherwise complies with the law with respect to licenses to incorporated clubs which have been in existence for 20 years. Op. Atty. Gen. (218g-15), July 26, 1943.

**7. On sale and off sale licenses.**

An ordinance restricting issuance of licenses to residents would be valid. Op. Atty. Gen. (218G-1), Aug. 20, 1941.

**8. Manufacturers and wholesalers.**

A license to manufacture strong beer in a dry county may be granted. Op. Atty. Gen. (218g-4), Nov. 7, 1941.

If ethyl alcohol is to be manufactured in good faith for and is used for non-beverage purposes, that is, for medicinal, mechanical, chemical, scientific, pharmaceutical or industrial purposes, manufacturer need not obtain license. Op. Atty. Gen. (218g-4), Sept. 8, 1942.

**9. Exclusive liquor stores.**

License for sale of intoxicating liquor may not be issued to a private individual or group in a village where there is a municipal liquor store, except in International Falls. Op. Atty. Gen. (218G-15), Oct. 9, 1940.

Village recorder cannot be appointed manager of municipal liquor store. Op. Atty. Gen. (218g-13), Dec. 17, 1940.

So long as International Falls municipal liquor store is "off-sale" only, no drug store there can legally hold a license to sell liquor at off-sale, and may operate under a "permit," costing \$5 per year to sell intoxicating liquors on prescriptions only. Op. Atty. Gen. (218j-3), Jan. 10, 1941.

Village maintaining an off-sale municipal liquor store may not issue a private license. Op. Atty. Gen. (218g-13), Jan. 22, 1941.

A club cannot sell liquor to members without a license, and may not obtain a license in a city where there

is a municipally owned exclusive liquor store. Op. Atty. Gen. (218g-15), Feb. 17, 1941.

Laws 1941, c. 34, amending this section, forbid village incorporated for less than two years from establishing a municipal liquor store. Op. Atty. Gen. (218g-13), Apr. 23, 1941.

**11. License fees.**

Where owner of an exclusive liquor store sells his business, and city ordinance prohibits transfer of licenses, city council cannot refund part of license fee or authorize transfer or grant a license for unexpired term for nothing, but may issue a license on pro-rata basis for a shorter period than one year. Op. Atty. Gen. (218G-10), Sept. 13, 1940.

City council may by ordinance provide for pro-rating of license fees in cases where licenses are issued for less than one year, or it may provide a fixed fee for a year or any part thereof without pro-rating. Op. Atty. Gen. (218i-2), May 23, 1941.

Liquor licenses may not be issued for part of a year and no part of license fee may be refunded if licensee goes out of business. Op. Atty. Gen. (218g), June 11, 1943.

**3200-26. Application for license—Bond or deposit—Conditions—Forfeiture.**

Every person desiring a license from the liquor control commissioner, shall file with him a verified written application in the form to be prescribed by the commissioner. All applicants for manufacturer's and wholesaler's licenses to sell intoxicating liquor shall file with the liquor control commissioner a bond with corporate surety, to be approved by the liquor control commissioner, before granting such license, or, in lieu thereof, cash or United States Government bonds in the sum of \$10,000, according to the character of the license, made payable to the State of Minnesota. All applicants for a license to sell intoxicating liquors on any railroad train or other common carrier, shall file with the liquor control commissioner a bond with corporate surety to be approved by the liquor control commissioner before granting such license, or, in lieu thereof, cash or United States Government bonds in the sum of \$1,000.00. All manufacturers and wholesalers of wines containing not more than 25 per cent of alcohol by weight and manufacturers and wholesalers of beer containing more than 3.2 per cent of alcohol by weight, shall file with the liquor control commissioner, a bond with corporate surety to be approved by the liquor control commissioner before granting such license, or, in lieu thereof, cash or United States Government bonds in the sum of \$5,000.00.

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

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

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

As to manufacturers, wholesalers and common carriers:

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



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

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

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

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

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

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

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

All such bonds or policies shall be for the benefit of the obligee and all persons suffering damages by reason of the breach of the conditions thereof. In the event of the forfeiture of any such bond or policy for violation of law, the district court of the county wherein such licensed business was carried on may forfeit the penal sum of said bond or policy, or any part thereof, to the state or municipality named as obligee in such bond or policy. (As amended Apr. 19, 1943, c. 501, §2; Apr. 22, 1943, c. 568, §1.)

Laws 1943, c. 568, §2, provides: "Nothing herein contained or omissions shall be construed as repealing any prior amendments to the foregoing sections by the 1943 session of the legislature."

In absence of ordinance so providing or some provision in bond, full amount of bond may not be forfeited upon revocation of liquor license. Op. Atty. Gen., (218h-6), March 14, 1940.

General public or an individual may recover damages by reason of unlawful sale or giving away of intoxicating liquor. Op. Atty. Gen. (218-L), July 16, 1940.

City may retain control and possession of all government bonds and other legal securities for six years after licensee takes out a surety company bond. Op. Atty. Gen. (218l), June 17, 1941.

Cash or securities deposited in lieu of surety bonds must be held for six years after expiration of license, and where licenses are issued for consecutive years, there must be a deposit of at least \$1,000 for each year, thus if license is issued for five consecutive years there must be on deposit at least \$5,000. Op. Atty. Gen. (218L), Mar. 16, 1942.

A bond furnished by holder of an "on sale" liquor license must be renewed every year, or if securities are put up in place of bond, new and additional securities must be deposited for each year. Op. Atty. Gen. (218l), July 10, 1942.

Liability of city for illegal acts of its bartender. Op. Atty. Gen. (844b), Jan. 28, 1943.

United States bonds are not useable as security unless such as are immediately convertible into cash by an assignee or holder. Op. Atty. Gen. (218l), Apr. 19, 1943.

It is illegal for councilman to make contract with the city embodying a liquor license bond. Op. Atty. Gen. (218g), May 6, 1943.

Condition on which license is granted must at all times be covered by bond or insurance and insurance must cover through periods of limitation. Op. Atty. Gen. (218l), May 25, 1943.

Bartender employed by person holding license may hold office of city councilman. Op. Atty. Gen. (90e), July 22, 1943.

(d). Statute, and ordinance of Minneapolis, in rendering on sale liquor dealer liable for injuries caused by violation of statutes and ordinances, allows recovery on basis of a wrong done to a patron, but is a penalty and a punishment to proprietor for having violated the law, and fact that an individual is a beneficiary is merely incidental

as giving incentive to someone to enforce the penalty. *Mayes v. Byers*, 214M54, 7NW(2d)403, 144ALR821. See Dun. Dig. 4918.

In an action against an on sale liquor dealer and surety on his bond for injuries sustained as the result of a defective stairway maintained in violation of city ordinance, contributory negligence and intoxication of plaintiff were not a defense. *Id.*

In action by injured patron against on sale liquor dealer and surety on his bond, evidence held to sustain finding that basement stairs of defendant's premises were inadequately lighted and were of unsafe construction in violation of Minneapolis ordinance relating thereto and that such defect proximately caused plaintiff's fall and consequential injuries. *Id.*

Settlement with and release of negligent motorist causing wrongful death did not prevent subsequent suit and recovery of penalty from a liquor dealer and his surety, right of action under death statute and liability created under liquor license statute being wholly unrelated in scope and purpose. *Philips v. Aretz*, 215M325, 10NW(2d) 226. See Dun. Dig. 4918.

Whether a prohibited act is done negligently, with malice, intent, or in a spirit of sport, is unimportant in an action on the bond. *Id.*

Recovery on bond is allowed not for a tortious wrong but as a means of enforcing the penalty imposed on the dealer by statute, ordinance, and by his own contract. *Id.*

**3200-27. Revocation of licenses.**—Any license issued under the provisions of this act may be revoked by the authority issuing such license for violation of any provisions of this act. "Off sale" licenses may be revoked by the governing body of the municipality after hearing or revoked by the liquor control commissioner after hearing. No manufacturer or wholesaler shall either directly or indirectly own or control or have any financial interest in any retail business selling intoxicating liquor, but this restriction shall not be construed to deny such person the right to use or have his property rented for such purposes in any case where the manufacturer or wholesaler was the bona fide owner of the premises prior to November 1, 1933. No manufacturer or wholesaler shall exact or require, by contract, understanding or otherwise, any licensed retailer to handle or sell only the products of any particular manufacturer or wholesaler. No license shall be granted to any person who opens a new drug store after the passage of this Act, until such person shall have operated such store continuously for a period of two years, or shall have purchased a drug store that shall have been in continuous operation for two years. All licenses issued for any one municipality except manufacturer's and wholesaler's licenses, shall expire at the same time. No more than one retailer's license shall be directly or indirectly issued to any one person or for any one place, in each municipality. No retailer's "On sale" or retailer's "Off sale" license shall be directly or indirectly issued with respect to any place in any municipality maintaining an exclusive liquor store nor to any person or for any place for which a license of another class has been granted. No "On sale" or "Off sale" license shall be effective beyond the compact and contiguous space named therein for which the same was granted, except that an "On sale" license granted for sales in the dining room of any hotel in cities of the first and second class and villages of over 10,000 may permit sales of liquor with meals in additional dining rooms open to the public and specified in the license where meals are regularly served to guests therein. No license shall be issued for premises located within areas restricted against commercial use through zoning ordinances or other proceedings or legal processes regularly had for that purpose, except that licenses may be issued for sale in restaurants in premises which have been restricted against commercial uses since the establishment of such restaurants therein; and no license shall be issued contrary to the provisions of any charter, ordinance, or any special law restricting areas within which intoxicating liquor may be sold. No license shall be issued for premises or places in which the sale or use thereof has been prohibited by Mason's Minnesota Statutes, 1927, Sections 3238-3

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

The legislature expressly reserves the right to limit or diminish the number of licenses, to limit the profits of any authorized manufacturer, wholesaler, or retailer as a condition to granting or continuing a license, and to regulate, limit or prohibit the issuance or sale of capital stock in any licensee as a condition to granting a license. (As amended Act Apr. 19, 1943, c. 501, §3.)

Laws 1943, c. 501, §4, provides: "Nothing herein contained or omissions shall be construed as repealing any prior amendments to the foregoing sections by the 1943 session of the legislature."

#### 1. In general.

License may be transferred if village which issued it consents to its transfer. Op. Atty. Gen., (218G-10), Dec. 1, 1939.

Provision that "no more than one license shall be issued to any person in any municipality, except as specifically provided by this act" prohibits issuance of more than one license to any corporation within same municipality. Op. Atty. Gen., (218G-12), Feb. 16, 1940.

An on sale liquor license may be transferred with consent and approval of body which issued it. Op. Atty. Gen., (218G-14), March 30, 1940.

Revocation of license is mandatory where violation of statutes is willful, otherwise revocation is discretionary, and violation by an employee would be discretionary unless licensee himself had knowledge of act and consented to or acquiesced in it, and there should be a hearing whether or not there has been a conviction for a violation. Op. Atty. Gen., (218G-14), April 8, 1940.

Revocation of a license for cause requires a hearing, but an application for a renewal may be denied without any hearing. Op. Atty. Gen. (218G-5), Jan. 15, 1941.

License should not be issued for less than one year, unless purpose is to bring it to same expiration date as other licenses. Op. Atty. Gen. (218g), Apr. 24, 1941.

Where application is made to transfer an "on sale" license, village council may not cancel existing license and issue a new one, but may transfer old license and make a clerical charge, requiring a new bond. Op. Atty. Gen. (218g-10), June 11, 1941.

Liquor dealer with an "on sale" but no "off sale" license may make a gift of a bottle of liquor to a customer. Op. Atty. Gen. (218), Oct. 28, 1941.

In case of a willful revocation of the liquor law, revocation of license by village is mandatory, and in other cases, whether there is just cause for revocation rests in sound discretion of council whose action must not be arbitrary or unreasonable, licensee being entitled to notice of hearing, and whether failure of a licensee to pay fees and charges when due to the village would constitute just cause for revocation in any particular

case depends upon facts, and no general rule can be laid down, and fact that licensee chooses to close his place of business temporarily would not be grounds for revocation, nor would the fact that he surrendered his lease, since he may negotiate another lease, and in case of any revocation for just cause no part of unused license fee need be returned, and if a new license is issued to a different person, new licensee is required to pay the full license fee. Op. Atty. Gen. (218g-14), Apr. 9, 1943.

If city council suspends a license for 30 days, state control commissioner has right to cancel identification card for the same period. Op. Atty. Gen. (218h-3), Dec. 9, 1943.

City may suspend license for 30 days where licensee makes a sale to a minor without willful intent, but in case of willful sale revocation of license is mandatory and licensee is not eligible for another license for 5 years. Op. Atty. Gen. (218h-3), Dec. 9, 1943.

#### 2. Manufacturers interested in retail business.

There is no law which prohibits a manufacturer or wholesaler from being financially interested in another wholesale business. Op. Atty. Gen., (218g-4), Feb. 1, 1940.

A brewery company may furnish fixtures upon an agreement for exclusive handling of 3.2 beer in places where retailer is also handling strong beer and intoxicating liquors not to exclusion of competitors, provided that no wholesaler or manufacturer of intoxicating liquor "has a financial interest" in the retailer's business. Op. Atty. Gen. (218h-5), Dec. 6, 1941.

Manufacturers and wholesalers of intoxicating malt liquors may furnish fixtures for other than retail liquor establishments. Op. Atty. Gen. (218j-11), May 25, 1943.

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

Permit to drug store in dry territory to sell liquor on prescription is authorized, and does not prevent issuance of 3.2 beer license. Op. Atty. Gen., (218J-3), Sept. 28, 1939.

"Plain view of the public" means in "plain view of the public inside the building". Op. Atty. Gen., (218E), March 18, 1940.

An on sale intoxicating liquor licensee, if eligible in other respects, may also be licensed to sell non-intoxicating malt beverages, and an exclusive liquor store may obtain a non-intoxicating malt liquor off sale license, but not an on sale license. Op. Atty. Gen., (218G-5), April 18, 1940.

On sale licenses for non-intoxicating liquor may be issued to persons who already have on sale hard liquor establishment, but they must be drug stores, restaurants, hotels, or bona fide clubs. Op. Atty. Gen. (217B-5), June 8, 1940.

One who has no on sale intoxicating liquor license cannot obtain an off sale, intoxicating liquor license for the same premises where he holds a non-intoxicating beer license. Op. Atty. Gen. (218g-5), July 9, 1943.

#### 4. Municipality maintaining exclusive liquor store.

So long as International Falls municipal liquor store is "off-sale" only, no drug store there can legally hold a license to sell liquor at off-sale, and may operate under a "permit" costing \$5 per year to sell intoxicating liquors on prescriptions only. Op. Atty. Gen. (218j-3), Jan. 10, 1941.

#### 7. Qualifications of licensee.

One convicted of crime of concealing information connected with enforcement of federal revenue law was not disqualified from holding license. Op. Atty. Gen. (218g), March 10, 1942.

**3200-28. Regulation of sales—Prohibited times, places, and persons—Orderly conduct—Gambling devices—Prostitutes—Employment of minors—Pool and billiard tables.—Subdivision 1.** No sale of intoxicating liquor shall be made on Sunday nor before three o'clock P. M. on any Memorial Day nor before eight o'clock P. M. on any Election Day in the district in which such election shall be held. No "On sale" shall be made before eight o'clock A. M., or after 12 o'clock midnight on any day. Provided, however, in cities of the first and second class only, "On sale" may be permitted until two hours after 12 o'clock midnight on Saturday and until one hour after 12 o'clock midnight on Monday, Tuesday, Wednesday, Thursday and Friday. No "Off sale" shall be made before eight o'clock A. M. or after eight o'clock P. M. of any day except Saturday, on which day "Off sales" may be made until ten o'clock P. M.; provided, however, that no "Off sale" shall be made on New Year's day, January 1; Memorial day, May 30; Independence day, July 4; Thanksgiving day or Christmas day, December 25; but on the evenings preceding such days, if the sale of liquor is not otherwise prohibited on such evenings, "Off sales" may be made until ten o'clock P. M., except that no off sale shall be made on December 24 after eight o'clock P. M. No "On sale" place of business shall be permitted to have swinging doors or opaque windows. All sales shall

be made in full view of the public. No intoxicating liquor shall be sold or furnished for any purpose whatever to any person under the age of 21 years, or to an habitual drunkard or to any person obviously intoxicated or to any of the persons to whom sale is prohibited by statute or by reason of sale to whom a penalty is provided by statute.

Subdivision 2. No intoxicating liquors shall be sold within the capitol or upon the grounds thereof, or upon the state fair grounds or in any place where such sales shall be prohibited by law or by the ordinance of any city, village or borough. Every licensee shall be responsible for the conduct of his place of business and for conditions of sobriety and order therein. No licensee shall keep, possess or operate, or permit the keeping, possession or operation of, on the licensed premises, or in any room adjoining the licensed premises, any slot machine, dice or any gambling device or apparatus, nor permit any gambling therein, or permit the licensed premises or any room in the same or in any adjoining building, directly or indirectly under its control, to be used as a resort for prostitutes or other disorderly persons. No person under 21 years of age shall be employed in any rooms constituting the place in which intoxicating liquors are sold at retail "On sale." No pool table or billiard table shall be kept or used in any "On sale" premises except a club as defined in this act. (As amended Act Apr. 24, 1941, c. 415, §1; Act Apr. 23, 1941, c. 503, §1.)

The retail sale for beverage purposes of ethyl alcohol or neutral spirits, or substitutes therefor, possessing the taste, aroma and characteristics generally attributed to ethyl alcohol or neutral spirits, as such, is hereby prohibited. Nothing in this paragraph shall be construed to prohibit the manufacture or sale of other products obtained by the use of ethyl alcohol or neutral spirits as defined in the Standards of Identity for Distilled Spirits, Article Two (2), Regulations number five (5), Federal Alcohol Administration. (Act Jan. 6, 1934, Ex. Ses., c. 46, §8; Mar. 31, 1939, c. 101, §2; Apr. 22, 1939, c. 429.) [340.14]

**Editorial note:**—The last paragraph of this section was amended by Laws 1939, c. 101, and also by Laws 1939, c. 429. Both should be given effect.

#### ½. In general.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesenbrick, 211M114, 300NW398. See Dun. Dig. 8011.

A licensee under Minneapolis Non-intoxicating Liquor Ordinance, §25, "suffers" mixing or spiking of beverages to be done when, although possessed of power to act and duty requires action, he fails to act; word "suffer" being construed to be synonymous with "permit", "consent", to "approve of", and "not to hinder". State v. Jamieson, 211M262, 300NW809. See Dun. Dig. 4928c.

Holder of hard liquor license and 3.2 beer license need not maintain separate places or rooms. Op. Atty. Gen. (217B-5), June 8, 1940.

A place where intoxicating liquor was illegally sold may be abated as a nuisance in a proper case. Op. Atty. Gen. (218f), Aug. 20, 1943.

#### 1. Prohibited times.

Evidence sustained conviction for selling intoxicating liquor on Sunday. State v. Wilson, 212M380, 3NW(2d)677. See Dun. Dig. 4926.

On trial of charge of selling liquor on Sunday there was no fatal variance because proof showed an off-sale, for which defendant had no license. Id. See Dun. Dig. 4941.

Person holding hard liquor license and also 3.2 beer license can remain open after 12:00 o'clock and sell beer. Op. Atty. Gen. (217B-5), June 8, 1940.

Holiday sale restrictions found in Laws 1941, c. 415, are in force and effect and have not been repealed by Laws 1941, c. 503, both amending this section. Op. Atty. Gen. (218j-6), May 23, 1941.

Provision in Laws 1941, c. 415, as to "off-sale" on Memorial Day is applicable to sales by municipal liquor store in Mankato. Op. Atty. Gen. (218j-6), May 23, 1941.

One who has purchased liquor during hours may drink it after closing time. Op. Atty. Gen. (218e), Jan. 20, 1943.

Monday May 21, following Decoration Day on Sunday, is not a legal holiday. Op. Atty. Gen. (276c), May 25, 1943.

#### 2. Prohibited persons.

A tavern is liable for death of minor either given or sold liquor. Sworski v. C., 208M43, 293NW297. See Dun. Dig. 4928a.

Section 4111-1 is the only statute bearing on question of prohibiting employment of a minor under 18 years of age in 3.2 beer establishments, and fact that minor is child of owner is immaterial. Op. Atty. Gen., (218J-12) April 3, 1940.

Municipal liquor store may not sell intoxicating liquor to father of a minor child, such liquor to be consumed by such minor upon the premises. Op. Atty. Gen. (218J-12), Sept. 5, 1940.

Liquor may be sold to soldiers and sailors in uniform. Op. Atty. Gen. (218j-12), Dec. 11, 1941.

Sale to a minor by a licensee is a misdemeanor, while sale to a minor by one without a license is a gross misdemeanor. Op. Atty. Gen. (218J-12), Feb. 6, 1942.

Where primary business of off-sale licensees, such as drug stores and grocery stores, is other than liquor business, and dealing in so-called "off-sale liquors" is only incidental to and carried on in same store with main business, it was not intention of legislature to exclude minors from being employed by or being present in such drug or grocery stores, even though minor might not be eligible to sell the liquor. Op. Atty. Gen. (218J-12), Mar. 12, 1942; Mar. 19, 1942.

It is illegal for minors to be employed in places engaged in sale of intoxicating liquor, except where primary business of licensee is other than liquor business and where dealing in so-called off sale liquor is only incidental to and carried on in same store with the main business. Op. Atty. Gen. (218j-12), March 2, 1943.

City may suspend license for 30 days where licensee makes a sale to a minor without wilful intent, but in case of wilful sale revocation of license is mandatory and licensee is not eligible for another license for 5 years. Op. Atty. Gen. (218H-3), Dec. 9, 1943.

#### 3. Sales to be open to public view.

Full view of public means full view of public inside place. Op. Atty. Gen. (218e), March 20, 1943.

#### 4. Gambling on premises.

Where there has been continuous and persistent violations of liquor and gambling statutes and repeated convictions have failed to abate them an injunction is properly granted to abate a "public nuisance." State v. Sportsmen's Country Club, 214M151, 7NW(2d)495. See Dun. Dig. 4947a.

Pinball machines should not be allowed in liquor store. Op. Atty. Gen. (733d), Sept. 28, 1943.

#### 5. Prohibited places.

Mason's 1940 Minnesota Supplement, §10165, forbidding issuance of a dance hall license for any place which has direct or indirect communication with any room where intoxicating liquor is sold, is still in force and effect. Op. Atty. Gen. (802a-3), Nov. 29, 1940.

There is no state law limiting distance that liquor store must be from a school or church. Op. Atty. Gen. (218G-13), Aug. 18, 1941.

#### §200-29. Commissioner to assist public education; etc.

It is common knowledge that large amounts of alcohol may cause death. Sworski v. C., 208M43, 293NW297. See Dun. Dig. 3451.

#### §200-30. Licenses for sale of intoxicating liquors.

Act Apr. 24, 1941, c. 401, authorizes any city or village in a county with population of 14,500 to 15,000, 24 to 28 townships, and assessed valuation of \$4,500,000 to \$5,000,000, to hold an election for the establishment of a municipal liquor store.

Kittson County is still a dry county, and a village therein cannot vote on question of licensing sale of intoxicating liquor, unless the county votes thereon, Laws 1939, chapter 295, amending this section, seeming to apply only to Otter Tail County. Op. Atty. Gen., (218c-3), Oct. 26, 1939.

There is no state law which prohibits a gift of intoxicating liquor or nonintoxicating malt beverages, but it may be argued that a gift of liquor or beer with a meal by a hotel or restaurant would be a mere subterfuge. Op. Atty. Gen., (217), Nov. 4, 1939.

All of Cottonwood County will continue to be a dry county until a special election is held pursuant to §3200-41, and until that time a village cannot hold an election under §3200-35. Op. Atty. Gen., (218c-3), Nov. 7, 1939.

Prior to enactment of Laws 1939, c. 395, amending this section, electors of a city or village had no legal right to vote on question of operating a municipal liquor store, and since passage of that act only cities or villages described by it may have election under it. Op. Atty. Gen., (218G-13), Dec. 14, 1939.

Blank ballots cannot be counted in determining result of election for or against municipal liquor store. Op. Atty. Gen., (218G-13), Dec. 16, 1939.

A village located in a dry county but on county line may buy adjoining land in other county and establish a municipal liquor store there. Op. Atty. Gen., (484E-1), March 2, 1940.

Where village voted against granting of license in 1914 and county voted against repeal of 18th amendment in 1933, but majority in village at that election were wet, and later village annexed land in a wet

county, license cannot be issued for wet strip without a vote of electors at the general and not special election. Op. Atty. Gen. (218c-3), May 5, 1941.

Except as to specified cities, a city may not have an election on question of establishment of a municipal liquor store in a dry county, but there must be an affirmative vote of electors of whole county under Mason's Stat. 3240, et. seq. Op. Atty. Gen. (218c-1), Oct. 28, 1941.

A license to manufacture strong beer in a dry county may be granted. Op. Atty. Gen. (218g-4), Nov. 7, 1941.

Laws 1941, c. 401, applies only to cities and villages having a population of 600 or more. Op. Atty. Gen. (218c-3), Nov. 26, 1941.

Form of complaint suggested for use in prosecuting sale of liquor in a county which has voted dry. Op. Atty. Gen. (133B-40), Feb. 28, 1942.

Village of Perham establishing a municipal liquor store for off-sale only, following an election, can establish an on-sale store. Op. Atty. Gen. (218r), Apr. 16, 1942.

### 3200-32. Sale for medicinal, mechanical and scientific purposes—License.

So long as International Falls municipal liquor store is "off-sale" only, no drug store there can legally hold a license to sell liquor at off-sale, and may operate under a "permit" costing \$5 per year to sell intoxicating liquors on prescriptions only. Op. Atty. Gen. (218j-3), Jan. 10, 1941.

A pharmacist holding a \$5 permit may sell to a dentist or physician one quart of alcohol on each prescription or any dentist or physician may secure a \$1 permit which will give him right to purchase 2 gallons of alcohol per year from a licensed wholesale dealer. Op. Atty. Gen. (218j-17), Feb. 20, 1941.

If ethyl alcohol is to be manufactured in good faith for and is used for non-beverage purposes, that is, for medicinal, mechanical, chemical, scientific, pharmaceutical, or industrial purposes, manufacturer need not obtain license. Op. Atty. Gen. (218g-4), Sept. 8, 1942.

Permits to fill prescriptions may be issued to licensed druggists as well as pharmacists. Op. Atty. Gen. (156a), June 15, 1943.

### 3200-33. Removal of officers who fail to perform duty—Etc.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesenbrick, 211M114, 300NW398. See Dun. Dig. 8011.

Sale to a minor by a licensee is a misdemeanor, while sale to a minor by one without a license is a gross misdemeanor. Op. Atty. Gen. (218j-12), Feb. 6, 1942.

An action may be maintained for the abatement by injunction of a beer tavern guilty of continuous and persistent violation by selling intoxicating liquor without a license. Op. Atty. Gen. (218f), May 24, 1943.

(a). If village council issues an unqualified license, or issues it to a club clearly not entitled thereto, members would be subject to penalties and removal under this section. Op. Atty. Gen. (218g-15), May 1, 1941.

(b). In absence of ordinance so providing or some provision in bond, full amount of bond may not be forfeited upon revocation of liquor license. Op. Atty. Gen., (218h-6), March 14, 1940.

Revocation of license is mandatory where violation of statutes is willful, otherwise revocation is discretionary, and violation by an employee would be discretionary unless licensee himself had knowledge of act and consented to or acquiesced in it, and there should be a hearing whether or not there has been a conviction for a violation. Op. Atty. Gen., (218G-14), April 8, 1940.

(f). City officers who issue any licenses in excess of statutory limitation may lay themselves open to prosecution for a gross misdemeanor. Op. Atty. Gen., (218g-6), Nov. 27, 1939.

In a dry county a person charged with possession of intoxicating liquor for unlawful sale may be charged with a misdemeanor by omitting to allege in the complaint that the offense was committed in a dry county. Op. Atty. Gen. (218f), July 9, 1941.

### 3200-35. Local option elections in villages.

All of Cottonwood County will continue to be a dry county until a special election is held pursuant to §3200-41, and until that time a village cannot hold an election under §3200-35. Op. Atty. Gen., (218c-3), Nov. 7, 1939.

Where village voted against granting of license in 1914 and county voted against repeal of 18th amendment in 1933, but majority in village at that election were wet, and later village annexed land in a wet county, license cannot be issued for wet strip without a vote of electors at the general and not special election. Op. Atty. Gen., (218c-3), May 5, 1941.

If village votes "against license", it becomes a "dry village" and can no longer operate a municipal liquor store. In a "wet village" it is for council to decide whether to operate a municipal store or issue private licenses. Op. Atty. Gen. (218c-3), Dec. 9, 1941.

### 3200-37. Local option election in fourth class cities on petition of voters—Notice.

Where city was located in two counties and each county had a local option election and one voted wet and the other dry, respective votes in such election cannot be considered in determining whether city is wet or dry, and city may hold a new election to determine whether licenses may be granted in portion of city in the wet county. Op. Atty. Gen., (218c-1), April 22, 1940.

After city electors have voted "for license" it is entirely discretionary with city council to pass kind of ordinance they want, and thereby either create a municipally owned liquor store, or grant private licenses. Id.

Where village voted against granting of license in 1914 and county voted against repeal of 18th amendment in 1933, but majority in village at that election were wet, and later village annexed land in a wet county, license cannot be issued for wet strip without a vote of electors at the general and not special election. Op. Atty. Gen. (218c-3), May 5, 1941.

A petition filed less than twenty days before regular city election would warrant submission of proposition to voters at a subsequent regular city election. Op. Atty. Gen. (218C-1), Oct. 16, 1941.

### 3200-38. Same—Ballots—Marking and casting; etc.

A ballot entitled "Liquor License Ballot" instead of "License Ballot" is valid. Op. Atty. Gen. (218c-1), Feb. 24, 1941.

A direction to voters to place a crossmark in square opposite words "for license" or "against license" would not invalidate ballot. Op. Atty. Gen. (218C-1), Oct. 16, 1941.

### 3200-40. Local option elections in counties; etc.

If houses are not numbered, no house number can be given; if streets are not named or numbered no street name or number can be given, but statute requires that every petitioner shall specify his residence with as much definiteness as possible. Op. Atty. Gen. (218c-1), Nov. 12, 1942.

"Last preceding general election" means last general election before presentation of petition to county auditor, even though some of petitions were signed prior to that election. Id.

### 3200-41. Same—Special election—Time.

Special elections should not be held at same time, or close to time of any general or primary village election. Op. Atty. Gen., (218c), Oct. 21, 1939.

All of Cottonwood County will continue to be a dry county until a special election is held pursuant to §3200-41, and until that time a village cannot hold an election under §3200-35. Op. Atty. Gen., (218c-3), Nov. 7, 1939.

### 3200-44. Same—Challenge of voters.

Establishment of a municipal liquor store is a matter for council to determine, and election cannot be called therefor. Op. Atty. Gen., (218G-13), Feb. 10, 1940.

### 3200-49. Same—Result of election and effect thereof—Accrued offenses.

Where city was located in two counties and each county had a local option election and one voted wet and the other dry, respective votes in such election cannot be considered in determining whether city is wet or dry, and city may hold a new election to determine whether licenses may be granted in portion of city in the wet county. Op. Atty. Gen., (218c-1), April 22, 1940.

Where county votes wet, every city or village which voted dry prior to 1918 remains a dry city or village until an election is held under §3200-35 or §3200-37, but a city or village which never voted dry under local option laws is considered as wet. Id.

### 3200-51. Same—Offenses in prohibition territory—Unexpired licenses—Etc.

Six per cent beer may not be stored in dry county. Op. Atty. Gen., (218o), April 8, 1940.

Prosecution under this section for unlawful possession of intoxicating liquor for sale is in effect a gross misdemeanor because of the penalty herein prescribed. Op. Atty. Gen. (218f), July 9, 1941.

A license to manufacture strong beer in a dry county may be granted. Op. Atty. Gen., (218g-4), Nov. 7, 1941.

Municipal authorities in a dry county may not permit a beer distributor to store strong beer in a warehouse for deliveries to other counties. Op. Atty. Gen. (218o), Nov. 27, 1941.

### 3200-52. Same—Certificate of result of election, etc.

Form of complaint suggested for use in prosecuting sale of liquor in a county which has voted dry. Op. Atty. Gen. (133B-40), Feb. 28, 1942.

### 3200-53. Same—Arrest of violators; etc.

Sheriff as chief peace officer of his county is responsible both by common and statutory law to keep and conserve peace and good order within his county, and may be removed from office for closing his eyes to operation of gambling devices in municipality in his county, and it is no excuse that he would serve any warrants issued. Removal of Mesenbrick, 211M114, 300NW398. See Dun. Dig. 8011.

## LIQUOR TAX ACT

**3200-61a. Labels on containers of intoxicating liquors.**—Each container of intoxicating liquor holding one-half pint or more, except containers of fermented malt beverages and of wine designed and intended exclusively for sacramental purposes, shall bear a label to be known as a certification label containing the following printed language, to-wit:

"The manufacturer of the contents of this container certifies that the liquor herein contains no matter deleterious or injurious to health, and that the contents are as described on the label or labels affixed hereto, as required by the laws of the United States."

Such certification labels must be fixed on the container itself, and not on any wrapper or container covering. (Act Mar. 10, 1943, c. 113, §1.) [340.461(1)]

**3200-61b. Same—Form of labels.**—The form of such certification labels shall be designed by the Liquor Control Commissioner, and shall be provided by and printed under the supervision of the commissioner of administration in such quantity as may be required. Such certification labels may be combined with and issued in combination with intoxicating liquor excise tax stamps, if the Liquor Control Commissioner, the state treasurer, and the commissioner of administration shall so determine. The commissioner of administration shall prescribe such requirements and provide such supervision of the manufacture and delivery thereof as may be necessary to prevent forgery, misappropriation or fraud. The labels so provided shall be delivered to the state treasurer for sale. Such labels shall be sold by the state treasurer at a cost of one cent each, and the proceeds arising from the sale thereof shall be paid into the general revenue fund of the state. (Act Mar. 10, 1943, c. 113, §2.) [340.461(2)]

**3200-61c. Same—Who may purchase labels.**—Such certification labels shall be sold only to distillers, importers, winers, or duly licensed manufacturers, wholesalers and common carriers licensed to sell intoxicating liquor. (Act Mar. 10, 1943, c. 113, §3.) [340.461(3)]

**3200-61d. Same—Sale without labels a misdemeanor.**—Any sale of intoxicating liquor in this state to which no such certification label is attached shall be a gross misdemeanor and punishable as provided by law. (Act Mar. 10, 1943, c. 113, §4.) [340.461(4)]

**3200-61e. Same—Forging of labels to be deemed forgery in third degree.**—Any person who with intent to defraud shall forge any such certification label, shall be guilty of forgery in the third degree and punished accordingly. (Act Mar. 10, 1943, c. 113, §5.) [340.461(5)]

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

1. On all unfortified wines, the sum of 10 cents per gallon;
2. On all fortified wines from 14 to 21 per cent of alcohol by volume, the sum of 30 cents per gallon;
3. On all fortified wines from 21 to 24 per cent of alcohol by volume, the sum of 60 cents per gallon;
4. On all fortified wines containing more than 24 per cent of alcohol by volume, the sum of \$1.00 per gallon;
5. On all natural and artificial sparkling wines containing alcohol, the sum of \$1.00 per gallon;

On all other distilled spirituous liquors, liqueurs, cordials and liquors designated as specialties regardless of alcoholic content, the sum of \$1.00 per gallon, but not including ethyl alcohol; provided, that in

computing the tax on any package of spirits a proportional tax at a like rate on all fractional parts of a gallon shall be paid, except that all fractional parts of a gallon less than one-sixteenth shall be taxed at the same rate as shall be taxed for one-sixteenth of a gallon.

(b) On fermented malt beverages. An excise tax is hereby assessed, imposed and levied upon the sale, either directly or indirectly on fermented malt beverages other than for shipment in interstate or foreign commerce. Such tax shall not be imposed or collected upon fermented malt beverages given away by a brewery for consumption only upon the brewery premises, for which no charge of any kind is made or collected; nor shall fermented malt liquors distributed to brewery employees for consumption only upon the brewery premises pursuant to a contract of employment be subject to such tax. Such tax shall be levied and collected at the rate of \$1.00 per barrel of 31 gallons, containing not more than 3.2 per cent of alcohol by weight, and a tax of \$2.00 per barrel of 31 gallons containing more than 3.2 per cent of alcohol by weight, and at a proportional rate for fractional parts thereof. All the receipts from these taxes shall be paid into the general revenue fund by the liquor control commissioner. (As amended Mar. 5, 1941, c. 47, §1; Apr. 6, 1943, c. 309, §1.)

If officers' club at Fort Snelling purchases liquor in interstate commerce, so that no sale occurs within state, then no state tax can be collected, but if such liquor is then sold by them, state is entitled to collect usual tax. Op. Atty. Gen. (218K), Nov. 27, 1940.

State cannot collect a tax on 3.2 beer sold by Post Exchange at Fort Snelling, but can collect a tax on beer sold by private individuals, concessions or in any other manner than through an authorized governmental instrumentality to authorized purchasers, in view of Buck Resolution, act of congress Oct. 9, 1940, c. 787. Op. Atty. Gen. (217J), May 20, 1941.

Excise tax paid under law which is declared unconstitutional may not be refunded without statutory authorization. Op. Atty. Gen. (218K), Jan. 5, 1942.

Non-beverage wine used in manufacture of flavoring extracts and medicinal preparations, instead of ethyl alcohol, is not taxable. Op. Atty. Gen. (218k), Aug. 26, 1942.

**3200-63. Stamps—Payment of—Regulations—Affixing stamps to containers.**

Form of liquor excise tax stamp is now controlled by Commissioner of Administration and state treasurer, and Liquor Control Commissioner cannot complain that stamp ordered contained name of a prior Liquor Commissioner for purpose of identity of office. Op. Atty. Gen. (218n), Oct. 1, 1942.

(b). Act is not levied upon beer manufactured in state and shipped out of state or wasted, but only upon beer sold within the state. Op. Atty. Gen., (218k), Sept. 29, 1939.

**3200-65. Commissioner to enforce act—Employees—Record of sale of stamps—Inspection of books and premises.**

Manifests and monthly report submitted by wholesaler to office of liquor control commissioner are not records which public have right to inspect. Op. Atty. Gen., (218h-5), Oct. 31, 1939.

Regulation relating to labeling and standards of fill of non-intoxicating malt beverages is valid. Op. Atty. Gen., (218h-2), April 5, 1940.

**3200-68. Unstamped liquor confiscated.**

If bottles of whiskey taken from a bootlegger's car do not bear proper tax stamps they may be confiscated as contraband property pursuant to this section, but if they bear proper tax stamps they cannot be confiscated except by order of court after a conviction under some law. Op. Atty. Gen., (218f-3), Oct. 31, 1939.

Tax paid liquor may not be destroyed under §3200-83, opinion number 218F rendered June 24, 1935, not now being the law. Op. Atty. Gen. (218F-3), Aug. 29, 1941.

**3200-69. Offenses—Felony.**

Sale of liquor in refilled bottles or changing alcoholic content of original packages or bottles is unlawful. Laws 1941, c. 16.

Excise tax paid under law which is declared unconstitutional may not be refunded without statutory authorization. Op. Atty. Gen. (218K), Jan. 5, 1942.

**3200-78. Certain liquor must be registered.**—No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors containing more than 24 per cent of alcohol by volume, and

liquors designated as specialties regardless of alcoholic content, and ready for sale without further processing, unless such brand or brands shall be duly registered in the Patent Office of the United States. (As amended Apr. 6, 1943, c. 308, §1.)

A licensed manufacturer or wholesaler filing a trade-mark or trade-name for whiskey may use it on other distilled liquor, such as gin or brandy. Op. Atty. Gen. (218m), Apr. 1, 1942.

Under a trade-mark covering a beverage in one class it is not proper to import a beverage classified in a different class, and a trade-mark for a non-alcoholic beverage would not permit importation of distilled liquor containing more than twenty-five per cent alcohol. Op. Atty. Gen. (218m), May 20, 1942.

**3200-78a. Importers of intoxicating liquors must have licenses.**—No intoxicating liquor or ethyl alcohol shall be shipped into the State of Minnesota by any distiller, rectifier, winer, or wholesale distributor, or any other person, to any licensed Minnesota manufacturer or wholesale dealer unless and until such distiller, rectifier, winer, wholesale distributor, or such other person has secured a license from the Liquor Control Commissioner permitting him so to do. (Act Apr. 6, 1943, c. 307, §1.) [340.113(1)]

**3200-78b. Licenses to be issued by Liquor Control Commissioner.**—Such licenses shall be issued by the Liquor Control Commissioner for the term of one year, and must be renewed annually. Application for such a license shall be made to the Liquor Control Commissioner. The form of application shall contain an agreement on the part of the applicant that he will observe all of the laws of the State of Minnesota relating to the importation and sale of intoxicating liquor. Such application shall also contain such other information and statements as the Liquor Control Commissioner may require. Any person who has violated any of the laws of the State of Minnesota relating to intoxicating liquor shall not be entitled to such a license. The fee for each annual license shall be \$50.00, and such fee shall accompany the application for license. (Act Apr. 6, 1943, c. 307, §2.) [340.113(2)]

**3200-78c. Licenses may be revoked—Causes.**—Licenses may be revoked by the Liquor Control Commissioner for cause. Causes for the revocation thereof shall be any violation by the licensee of any law of this state relating to intoxicating liquor, or other conduct which justifies the Commissioner in the belief that the licensee has sought to avoid or evade compliance with such laws. (Act Apr. 6, 1943, c. 307, §3.) [340.113(3)]

**3200-78d. License fees to be paid into revenue fund.**—All sums collected by the Liquor Control Commissioner from license fees hereunder shall be paid into the general revenue fund of the State of Minnesota. (Act Apr. 6, 1943, c. 307, §4.) [340.113(4)]

**3200-78e. Violation a gross misdemeanor.**—Any distiller, rectifier, winer, wholesale distributor, or other person who shall ship or cause to be shipped into the State of Minnesota any intoxicating liquor or ethyl alcohol, without having a license so to do as herein provided, shall be guilty of a gross misdemeanor, and punished as prescribed by law. (Act Apr. 6, 1943, c. 307, §5.) [340.113(5)]

**3200-78f. Not to include malt beverages.**—Nothing in this act shall include malt beverages regardless of alcoholic content. (Act Apr. 6, 1943, c. 307, §6.) [340.113(6)]

#### DISPOSITION OF SEIZED LIQUORS

**3200-79. Liquor Commissioner may sell, distribute or destroy intoxicating liquors in certain cases.**—The Liquor Control Commissioner is hereby authorized

and directed to dispose of all intoxicating and spirituous liquors and liquids heretofore or hereafter seized by him or his agent and now or hereafter in his possession not contingent upon the final determination of any action pending in any court, by selling the same with the approval of the commissioner of administration at the wholesalers cost for a similar product from a distillery to a licensed wholesaler in the state, the funds received from such sale to be paid into the general revenue fund of the state, or by equitably allocating, distributing and delivering the same, tax exempt, to the various State institutions for external and medicinal purposes. Application for such allocation may be made by any State institution having use for or using the liquors or liquids herein mentioned. The Liquor Control Commissioner shall destroy any such liquor or liquids as are unfit for use, as herein provided, from time to time under such rules and regulations as the Commissioner may make.

Sales made by the Liquor Control Commissioner, as hereinabove provided, shall be exempt from the state excise tax if stamps evidencing the payment of such excise tax have not been placed thereon prior to such seizure; provided, however, that before resale by such purchaser proper excise tax stamps shall be attached to all containers of such liquors. (As amended Mar. 22, 1943, c. 165, §1.)

#### SEARCHES AND SEIZURES

##### **3200-81. Search and seizure of intoxicating liquor.**

This act does not apply to places selling 3.2 beer without a license. Op. Atty. Gen. (218f-3), May 28, 1940.

Manner of executing warrants. Op. Atty. Gen. (218f-3), Dec. 2, 1943.

Warrants can only be issued upon ground specified. Op. Atty. Gen. (218f-3), Dec. 2, 1943.

##### **3200-83. Same—Officer to make inventory; etc.**

Where prosecution was under §3200-51 charging possession for sale, and possession for sale was dismissed upon plea of guilty to the sale, tax paid liquor could be destroyed under this section. Op. Atty. Gen. (218f-3), Aug. 29, 1941.

##### **3200-84. Sheriff's contingent fund established.**

Money received from licenses is not included in fund. Op. Atty. Gen., (390a-10), Feb. 13, 1940.

#### MISCELLANEOUS OFFENSES

**3200-85. Refilling bottles.**—It shall be unlawful for any person to sell, offer for sale or keep for sale intoxicating liquors in any package or intoxicating liquor bottle which has been refilled or partly refilled. (Act Feb. 21, 1941, c. 16, §1.) [340.141]

**3200-86. Dilution and adulteration.**—It shall be unlawful for any person holding an intoxicating liquor license, directly or through any agent, employee or other person, to dilute or in any manner tamper with the contents of any original package or bottle so as to change its composition or alcoholic content while in said original package or bottle; and possession on the licensed premises by any licensee of any intoxicating liquor in the original package or bottle, differing in composition or alcoholic content from such liquor when received from the manufacturer or wholesaler from whom it was purchased, shall be prima facie evidence that the contents of said original package or bottle has been diluted, changed or tampered with. (Act Feb. 21, 1941, c. 16, §2.) [340.142]

**3200-87. Gross misdemeanor.**—Any person who violates the provisions of this act, as provided in sections 1 and 2, shall be guilty of a gross misdemeanor. (Act Feb. 21, 1941, c. 16, §3.) [340.143]



**MANUFACTURE AND SALE OF INTOXICATING  
MALT LIQUORS**

**3200-91. Definitions.**—Terms used in this Act, unless the context otherwise plainly requires, shall mean:

(a) "Intoxicating Malt Liquor", any liquor capable of being used for beverage purposes and which is produced wholly or in part from brewing of any grain or grains, or malt or malt substitute, containing in excess of 3.2 per cent of alcohol by weight.

(b) "Brewer", any person who shall manufacture for the purpose of sale, barter, exchange or transportation any intoxicating malt liquor.

(c) "Wholesaler", any person, other than a brewer, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in intoxicating malt liquor in quantities of not less than five standard gallons to the same person at one time, not to be consumed in or about the premises where sold.

(d) "Retailer" or "Retail Dealer", any person who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in intoxicating malt liquor in quantities of less than five standard gallons to the same person at one time.

(e) "Person", any individual, corporation, firm, partnership or association, and shall include the meaning extended thereto by Mason's Minnesota Statutes 1927, Section 10933.

(f) "Commissioner", the Liquor Control Commissioner of the State of Minnesota.

(g) "Application", a formal written request for the issuance of a license filed with, and in the form prescribed by, the Commissioner.

(h) "License", an authorization in writing issued by the Commissioner relating to the manufacture or wholesale of intoxicating malt liquor. (Act Apr. 16, 1943, c. 460, §1.)  
[340.401]

**3200-92. Must be licensed—License fees.**—(a) No person shall engage in business as a brewer or wholesaler of intoxicating malt liquor as defined in this Act nor shall any person, directly or indirectly, by any device, manufacture for sale or sell at wholesale any intoxicating malt liquor unless licensed to do so by the Commissioner.

(b) Application for license shall be made in writing, filed with the Commissioner in the form prescribed by him and verified by the applicant or, if a corporation, by one of its officers having knowledge of the facts. At the time of filing said application the applicant shall file with the Commissioner his bond and shall pay the license fee herein provided for.

(c) The annual fees for license shall be as follows: (1) for a brewer, the sum of \$500.00; (2) for a wholesaler, the sum of \$125.00.

A brewer holding a license to manufacture intoxicating malt liquor may sell his products at wholesale without another license. (Act Apr. 16, 1943, c. 460, §2.)  
[340.402]

**3200-93. Bond.**—(a) Every applicant for a license under the provisions of this Act shall, at the time of filing his application, file with the Commissioner a bond running to the State of Minnesota, with corporate surety, to be approved by the Commissioner before granting such license. The bond of a brewer shall be in the sum of \$5,000.00 and the bond of a wholesaler shall be in the sum of \$1,000.00. Any applicant may, in lieu of such bond, make a deposit with the Commissioner of cash or United States Government bonds in the same amount as that hereinbefore required for bond of such applicant.

(b) All bonds or deposits shall be conditioned as follows: (1) that the licensee shall obey the law relating to such licensed business; (2) that the licensee shall pay to the state, when due, all taxes, license fees, penalties and other charges payable by

him under any law relating to the manufacture, distribution or sale of intoxicating malt liquor; (3) that, in the event of any violation of the provisions of this Act or any law of the State of Minnesota relating to the manufacture, distribution or sale of intoxicating malt liquor, such bond shall be forfeited to the State of Minnesota.

(c) Upon the filing of said application, the approval of the bond and the payment of the license fee, the Commissioner shall grant the license unless it shall appear that the applicant: (1) is not a citizen of the United States; or (2) is not over 21 years of age; or (3) has been convicted of a felony under the laws of this state; or (4) has had his license revoked within a period of one year prior to the filing of his application. In the event that the applicant is a corporation the managing officers must possess the same qualifications herein stated.

All licenses shall be issued for a period of one year. No person now holding a license for the manufacture or sale at wholesale of intoxicating malt liquor shall be required to obtain a license under the provisions of this Act until the expiration of the period for which such existing license was issued but such licensee shall be subject to all other provisions of this Act. (Act Apr. 16, 1943, c. 460, §3.)  
[340.403]

**3200-94. Existing licenses to remain in effect.**—

(a) Any license issued under the provisions of this Act and any license heretofore issued for the manufacture or sale at wholesale of intoxicating malt liquor shall remain in effect during the period for which such license was issued unless surrendered by the licensee or suspended or revoked by the Commissioner in the manner provided in this Act. The Commissioner is hereby authorized, after notice to the licensee and an opportunity to be heard, upon proof of willful violation by the licensee of any provisions of this Act or of any prior or subsequent violation of any law of this state relating to the manufacture or sale at wholesale of intoxicating malt liquor, to suspend for a period not exceeding 60 days or to revoke such license whether issued under the provisions of this Act or issued prior to the passage of this Act. It shall be the duty of the Commissioner, upon receiving information of violation by any licensee of any provisions of this Act or of any prior or subsequent violation of any law of this state relating to the manufacture or sale at wholesale of intoxicating malt liquor, to make an immediate investigation thereof. If, after such investigation, the Commissioner shall determine that there is probable cause to believe that the licensee has willfully violated the provisions of this Act or any law of this state relating to the manufacture or sale at wholesale of intoxicating malt liquor and that the violation is of such a nature as to warrant suspension or revocation of license, he shall make and file a complaint, in writing, which complaint shall state the facts constituting the alleged violation of the law. A copy of said complaint, together with a notice of hearing thereon, shall be served upon the licensee in the manner provided by statute for the service of a summons in a civil action. The notice shall state the time of hearing which shall be not less than 20 days after the service of said notice. All hearings shall be open to the public and shall be held at the office of the Commissioner. For the purpose of conducting said hearings the Commissioner is hereby authorized to subpoena witnesses and administer oaths.

(b) After said hearing the Commissioner shall make and file findings of fact as to each violation of law alleged in the complaint and shall make and file his order dismissing the proceedings or suspending or revoking the license. The findings of fact and order of the Commissioner shall be served upon the licensee in the manner provided by statute for the service of a summons in a civil action. If said order shall suspend or revoke the license, such suspension

or revocation shall take effect and be in force and the right of the licensee to operate thereunder shall terminate ten days after the service of the order of the Commissioner, except in the event of a stay on appeal as hereinafter provided.

(c) When, in any proceedings under this section, the Commissioner shall find that the licensee has violated any provision of this Act or any laws of this state relating to the manufacture or wholesale of intoxicating malt liquor but that the nature of such violation or the circumstances thereof are such that a suspension of the license would be adequate, he may, instead of revoking the license, suspend it for a period not exceeding 60 days. During the period of such suspension the licensee shall exercise no rights under the license.

(d) Any licensee whose license is suspended or revoked by the Commissioner may appeal from such order of suspension or revocation to the District Court of the county in which the licensee maintains his principal place of business, which appeal shall be taken by service of written notice thereof upon the Commissioner within ten days after service upon the licensee of the order of suspension or revocation appealed from and by filing with the Clerk of said District Court, within ten days after service, the notice of appeal with proof of service thereof upon the Commissioner. The perfecting of an appeal shall operate to stay all proceedings until the final determination thereof. In the notice of appeal and in the proceedings upon appeal the Commissioner shall be named as the plaintiff and the licensee as the defendant. Upon the appeal being perfected, the Commissioner shall forthwith certify to the court the complete record in the proceedings and the court shall thereupon fix a time and place for hearing, due notice of which hearing shall be given to the parties. Upon the appeal to the District Court the hearing shall be de novo to the court without a jury and shall be conducted in the manner provided by statute for the trial of a civil action. The court shall make its findings of fact and its order either dismissing the proceedings or suspending the license for a period not exceeding 60 days or revoking said license.

(e) Either party may appeal from the final judgment of the District Court, or from any final order therein, in the same manner as in a civil action, within ten days after service of notice of the filing of such judgment or final order. No bond on appeal shall be required. The perfecting of an appeal to the Supreme Court shall operate to stay all proceedings until the final determination of said appeal. The Commissioner shall not refuse to issue a license to any licensee during the time that an appeal from an order of suspension or revocation of license is pending.

(f) When any license has been revoked no license shall be issued to such person within one year from the date of such order of revocation or, in the event of an appeal, within one year from the date of the judgment or final order of the court affirming such order of revocation. (Act Apr. 16, 1943, c. 460, §4.) [340.404]

**3200-95. Not to be interested in retail business.**—No brewer or wholesaler shall, either directly or indirectly, own or control, or have any financial interest in, any retail business selling intoxicating malt liquor; but this restriction shall not be construed to deny such person the right to use or have his property rented for such purpose in any case where the brewer or wholesaler was a bona fide owner of the premises prior to November 1, 1933. No brewer or wholesaler shall, directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner thereof, give, lend or advance any money, credit or other thing of value to any retailer or to any person for the benefit or relief of any retailer, nor furnish, give, lend, lease or sell to any person any furniture, fixtures, fittings or equipment; nor shall any brewer or wholesaler, directly or indi-

rectly, have any interest in, or pay for, any retail license, or advance, furnish, lend or give money for the payment of retail license fees or any expense incident to the obtaining of such license; nor shall any brewer or wholesaler become bound in any manner, directly or indirectly, for the repayment of any loan made to, or the fulfillment of any financial obligation of, any retailer, except that brewers or wholesalers may: (1) extend to retailers the usual and customary commercial credits for products of the industry actually sold and delivered; (2) furnish to retailers the containers of consumable products of the industry actually sold and delivered and may recover the same, or the value thereof, if such containers are not returned; (3) furnish, lend or rent outside signs to retailers, provided the cost of such signs, in the aggregate, furnish, lent or rented by any brewer or wholesaler to any retailer, including signs authorized by Mason's Supplement 1940, Section 3200-6 and acts amendatory thereof, shall not exceed \$100.00, exclusive of erection, installation and repair charges; but nothing herein shall be construed as affecting signs owned and located in the state on the effective date hereof by any such brewer or wholesaler; (4) furnish inside signs, miscellaneous advertising matter and other items not to exceed, in the aggregate, including similar items authorized by Mason's Supplement 1940, Section 3200-6 and acts amendatory thereof, a cost of \$25.00 in any calendar year to any one retailer; (5) furnish or maintain for retailers such equipment as is designed and intended to preserve and maintain the sanitary dispensing of intoxicating malt liquors, provided the expense incurred thereby does not exceed the sum or \$25.00 per tap per calendar year, no part of which shall be paid in cash to any retailer; (6) acquire within ten days after the effective date hereof any furniture, fixtures, fittings and equipment, or any valid lien thereon or interest therein, which were actually installed on the premises of any retailer prior to the effective date hereof; (7) lease or lend to the owner of the premises, or to any retailer now or hereafter occupying the premises, any furniture, fixtures, fittings and equipment actually located on said premises on the effective date hereof. Any such brewer or wholesaler who, within ten days after the effective date hereof, owns any furniture, fixtures, fittings or equipment in possession of any retailer on the effective date hereof may, within 90 days after said effective date, sell the same to such retailer only for cash on delivery and deliver a bill of sale to the same. (Act Apr. 16, 1943, c. 460, §5.) [340.405]

Manufacturers and wholesalers of intoxicating malt liquors may furnish fixtures for other than retail liquor establishments. Op. Atty. Gen. (218j-11), May 25, 1943.

**3200-96. Not to make exclusive contracts.**—No brewer or wholesaler shall hereafter, directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner, enter into any agreement, oral or written, whether or not incorporated in any chattel mortgage, conditional sales contract, bill of sale, lease, land contract, mortgage, deed or other instrument, wherein and whereby any retailer is required to purchase the intoxicating malt liquor of any brewer to the exclusion, in whole or in part, of the products of other brewers. Act Apr. 16, 1943, c. 460, §6.) [340.406]

**3200-97. Who are violators.**—Any retailer who shall be a party to any violation of Section 5 or Section 6 of this Act, or who shall receive the benefits thereof, shall be equally guilty of a violation of the provisions thereof and shall be subject to the penalty hereinafter provided. (Act Apr. 16, 1943, c. 460, §7.) [340.407(1)]

**3200-98. Violation a gross misdemeanor.**—Any person who shall violate the provisions of this Act shall

be guilty of a gross misdemeanor and each violation shall constitute a separate offense. (Act Apr. 16, 1943, c. 460, §8.) [340.407(2)]

**3200-99. Inconsistent acts repealed.**—All Acts, or parts of Acts, inconsistent with the provisions of this Act are hereby repealed. (Act Apr. 16, 1943, c. 460, §9.)

Laws 1943, c. 460, §10, provides act should take effect from and after passage.

#### PRIOR LAWS

##### **3209. Prosecution. [Repealed.]**

Where there has been continuous and persistent violations of liquor and gambling statutes and repeated convictions have failed to abate them an injunction is properly granted to abate a "public nuisance." State v. Sportsmen's Country Club, 214M151, 7NW(2d)495. See Dun. Dig. 4947a.

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

There is no state law prohibiting licensing or operation of a place for sale of intoxicating liquor near a church. Op. Atty. Gen. (218g-1b), Mar. 27, 1941.

Where village voted against granting of license in 1914 and county voted against repeal of 18th amendment in 1933, but majority in village at that election were wet, and later village annexed land in a wet county, license cannot be issued for wet strip without a vote of electors at the general and not special election. Op. Atty. Gen. (218c-3), May 5, 1941.

##### **3238-4. Persons to whom sales, etc., illegal.**

Provisions forbidding sale of intoxicating liquor by persons who have been blacklisted do not apply to sale of non-intoxicating malt beverages. Op. Atty. Gen. (218e), June 6, 1940.

Municipal liquor store may not sell intoxicating liquor to father of a minor child, such liquor to be consumed by such minor upon the premises. Op. Atty. Gen. (218j-12), Sept. 5, 1940.

It is unlawful to sell 3.2 beer to an habitual drunkard after notice not to do so. Op. Atty. Gen. (218e), Jan. 20, 1943.

It is not a crime for a person of Indian blood to drink intoxicating liquor, nor to carry and have in his possession intoxicating liquor merely because he is an Indian. Op. Atty. Gen. (240c), July 12, 1943.

Indian rights and the federal courts. 24MinnLawRev 145.

##### **3238-9. Sales, etc., to minors; etc.**

Provisions forbidding sale of intoxicating liquor by persons who have been blacklisted do not apply to sale of non-intoxicating malt beverages. Op. Atty. Gen. (218E), June 6, 1940.

##### **3238-11. Inducing minors, etc., to enter saloons, etc.**

A place licensed to sell intoxicating liquors may not permit amateur performances therein by minors, even without compensation, unless a permit has first been obtained from industrial commission, and it is probable that such performances would violate criminal law. Op. Atty. Gen. (270a-4), May 24, 1941.

##### **3238-12. Exclusion from places where liquor is sold to minors, etc., after notice—Penalty.**

Where mayor of village in a dry county posted a notice in a beer parlor not to sell beer to a certain person, and was sued for libel, village council may reimburse mayor for attorneys fees and other expenses, and also a reasonable sum paid in settlement. Op. Atty. Gen., (469B-1), Nov. 16, 1939.

##### **3238-18½. Sale by employee.**

Revocation of license is mandatory where violation of statutes is wilful, otherwise revocation is discretionary, and violation by an employee would be discretionary unless licensee himself had knowledge of act and consented to or acquiesced in it, and there should be a hearing whether or not there has been a conviction for a violation. Op. Atty. Gen. (218g-14), April 8, 1940.

Section does not apply to off-sale liquor stores. Op. Atty. Gen. (218j-10), May 28, 1940.

#### CIVIL ACTIONS

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

Whether minor purchased or was given liquor at bar and as a result thereof died in jail, warranting recovery of damages by parents, held for jury, even though he committed suicide. Sworski v. C., 293NW297. See Dun. Dig. 4928a.

A person is liable for giving as well as selling liquor. Id.

This section does not manifest a legislative intent to protect beneficiaries of statute from their own failures or to impose a penal liability, and contributory negligence or intoxication may be a defense, but such is not true of liability under Minn. Stat. 1941, §340.12, Mason's Stat. 1940 Supp., §3200-26. Mays v. Byers, 214M54, 7NW (2d)403, 144ALR321. See Dun. Dig. 4918.

Liability of city for illegal acts of its bartender. Op. Atty. Gen. (844b), Jan. 28, 1943.

Section applies to city operating a municipal liquor store. Op. Atty. Gen. (218j-10), Feb. 3, 1943.

## CHAPTER 16A

### Cigarettes

##### **3242. Licensing of sale of cigarettes; etc. [Repealed.]**

Repealed. Laws 1941, c. 242.  
Repealed. Laws 1941, c. 405.

##### **3243. Licenses for sale and manufacture of cigarettes. [Repealed.]**

Repealed. Laws 1941, c. 242.  
Repealed. Laws 1941, c. 405.

Blind persons may manufacture or sell cigarettes without payment of license fee. Laws 1941, c. 461.

Various licenses may be posted in open faced paper display envelopes in a series fastened together at top like sheets of a calendar. Op. Atty. Gen. (829c), July 25, 1941.

**3243-1. Exemptions—Blind persons.**—No applicant for any license required of persons for the sale or manufacture of cigarettes shall be required to pay any fee to the state or any political subdivision thereof if he furnishes a doctor's certificate showing that he is blind, as defined by Laws of 1937, Chapter 324. (Act Apr. 26, 1941, c. 461, §1.) [461.15]

##### **3244 to 3248. [Repealed.]**

Repealed. Laws 1941, c. 242.  
Repealed. Laws 1941, c. 405.  
Sec. 2, Act Apr. 24, 1941, c. 405, provides that the powers and duties of the commissioner of taxation with respect to enforcement of cigarette license law shall continue until Dec. 31, 1941, and thereafter to the extent necessary to enforce penalties previously accrued.

**3250-1. Repeal.**—Mason's Minnesota Statutes of 1927, Sections 3242, 3244, 3245, 3246, 3247, and Mason's Supplement 1940, Sections 3243 and 3248, are hereby repealed, effective December 31, 1941. (Act Apr. 16, 1941, c. 242, §1; Act Apr. 24, 1941, c. 405, §1.)

State licensing law is repealed as of January 1, 1942, upon which date municipalities are authorized to regulate sales. Op. Atty. Gen. (829c-1), Nov. 12, 1941.

**3250-2. Powers and duties of Commissioner of Taxation Continued.**—The powers and duties of the commissioner of taxation with respect to the enforcement of the laws relating to licensing the manufacture and sale of cigarettes shall continue until December 31, 1941, and thereafter to the extent necessary to enforce penalties and collect fees accruing prior to said date. (Act Apr. 16, 1941, c. 242, §2; Act Apr. 24, 1941, c. 405, §2.)

**3250-3. License and retail sale to be regulated by local governing bodies.**—The governing body of each village, borough, and city of any class, may, after January 1, 1942, license and regulate the sale at retail of cigarettes, cigarette paper or cigarette wrappers and may fix the license fee therefor at not to exceed \$12.00 per annum, and provide for the punishment of any violation of such regulations, and may make such other provisions for the regulation of the sale of cigarettes within its jurisdiction as are permitted by