

Police Regulations

CHAPTER 340

INTOXICATING LIQUORS

BEER

340.01 LICENSES FOR SALE OF NON-INTOXICATING BEVERAGES.

HISTORY. 1933 c. 116 s. 1; M. Supp. s. 3200-5; 1945 c. 589 s. 1

1. Generally
2. Issuing license
3. Refusing license
4. Revoking license
5. License fees
6. Regulation
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1. Generally

The sale of non-intoxicating malt liquors is subject to regulation under the police power of the state; and delegating to village and city councils authority to license and regulate is a valid exercise of the police power. *Bernick v City of Little Falls*, 191 M 128, 253 NW 369.

A bond given to a city by a retailer of non-intoxicating liquor gave the city no right to the amount of the face of the bond as a penalty on a violation of law, but only such damages as the city could show it had suffered from such a violation. *City of St. Cloud v Willenbring*, 195 M 70, 261 NW 585.

A wholesaler may not sell and deliver non-intoxicating malt liquors direct to consumers in their homes in municipalities not granting licenses for the sale of such liquor. OAG April 4, 1933.

The power to license herein conferred on municipalities can only be exercised by enacting an ordinance before issuance of license or permit. OAG April 10, 1933; OAG April 15, 1933.

Where a home rule charter contains a method of enacting ordinances the city council has power to license vendors of non-intoxicating malt liquor and regulate the sale thereof by an ordinance enacted in the manner provided by the charter. OAG April 7, 1933.

The electors do not have the right to vote on the question of the issuance of non-intoxicating malt liquor licenses, and the number of such licenses to be granted is within the discretion of the governing body. OAG Jan. 29, 1937 (217b-7).

The voters of a town have no right to vote on the question of sale. OAG June 29, 1937 (434a-10).

A municipality can own a liquor store but not a non-intoxicating beer parlor. OAG Feb. 1, 1935 (218g-13).

County board has the exclusive right to license and regulate sale; the only duty resting on town board being to approve or disapprove applications for license, and town is not entitled to share in the license money. OAG April 6, 1933.

City or village council cannot stop the manufacture or sale of non-intoxicating malt liquor direct to consumers in two-gallon lots or more. OAG April 8, 1933.

A distributor acting as an agent of grocery houses and other firms who are jobbers of beer can qualify without a license only if the title in the beer is re-

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tained by the manufacturer and the agent is not an independent seller. OAG April 24, 1933.

Whether a concession stand in a public park is a "restaurant" which may sell malt liquor is a question of fact for the city council in the first instance. OAG March 16, 1938 (217f-1).

Whether an applicant is of good moral character and repute s for the council to determine. OAG Oct. 28, 1937 (217b-1).

One selling intoxicating liquors would be entitled to sell non-intoxicating malt liquors where he remodeled his place in such a manner as to entirely set off one place of business from the other and established a bona fide restaurant in the place he desired to sell malt liquors, though both places opened upon a hallway running to bowling alleys operated by the licensee. OAG March 21, 1938.

One receiving a license from a village and selling his place of business there could not sell malt liquors at a dance hall outside the village. OAG Oct. 31, 1935 (217b-7).

There is no state law prohibiting members of a club and their families from holding dances and selling non-intoxicating liquors thereat under a license. OAG April 23, 1934 (802-17).

Non-intoxicating malt liquors can legally be sold to Indians or persons of part Indian blood in so far as the state laws are concerned, but such a sale might be a violation of the federal laws. OAG Jan. 29, 1935 (218j-9).

Licenses issued by a county are not transferable. OAG April 20, 1933.

Licenses may be transferred from one location to another. OAG Aug. 3, 1934 (217d-6).

One operating a place of business in a village is entitled to have his license transferred when he moves to another place in the village. OAG Aug. 7, 1933.

A license issued by a county for selling beer at a county fair may be transferred to the licensee's regular place of business in the county, provided such place of business is not within a village or city. OAG Sept. 11, 1933.

An "on sale" license may not be transferred temporarily from a permanent place of business to a concession at a fair grounds. OAG Aug. 22, 1933.

2. Issuing license.

Licenses or permits cannot be granted until the ordinance is in full force and effect. OAG April 4, 1933.

There is no limit to the number of licenses that may be issued to one person. OAG March 1, 1938 (217b-1).

Granting a permit to one under the age of 21 would be futile, as the licensee could not purchase liquor for re-sale. OAG Oct. 13, 1934 (217f-3).

A malt liquor license might be granted to an Indian, but federal laws would probably prohibit his purchase of liquors for re-sale. OAG July 2, 1936 (240u).

State law does not prevent the granting of a license near an Indian reservation. OAG Aug. 1, 1938 (217b-8).

The state must procure a license for sale on state property. OAG June 15, 1938 (217b-10).

If the director of the division of parks of the department of conservation desires to operated a concession in an interstate park for the sale of non-intoxicating malt liquor, the state must have a license to sell, and the village of Taylors Falls has the right to refuse a license. OAG June 28, 1937 (217b-10).

WPA camp officials have no right to sell beer on camp ground located on ground leased by the federal government without a license from the county, and the approval of the town board. OAG Jan. 16, 1939 (218g-9).

A partnership may hold "on sale" and "off sale" beer licenses, to be used in connection with one business and in one building, and an "off sale" intoxicating liquor license to be used in a separate business in a different building. OAG May 12, 1937 (217b-7).

No license can be issued for the sale of non-intoxicating malt liquor by a county board unless the consent of the town in which it is to be sold is filed with the application. OAG April 1, 1933.

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A county may require a bond as a prerequisite to the securing of a license to sell malt liquors. OAG June 13, 1935 (217b-2).

County board, with the approval of the state fair board and the board of the town in which the state fair grounds are situated, may issue a license to sell non-intoxicating beer to a restaurant to be located on the fair grounds. OAG June 17, 1933.

County board of Hennepin county may issue license to the Minneapolis park board to sell non-intoxicating malt liquors at a golf course and airport situated outside the city limits of Minneapolis. OAG April 22, 1933.

Licenses to sell beer at restaurants on fair grounds are to be obtained from the governing body of the village, borough, or city, if the grounds are within an incorporated municipality, and from the county board, if the grounds are located in a town, subject to the approval of the town board and the consent of the fair board, licenses to be issued in the name of the operator of the restaurant. OAG June 26, 1933; OAG June 21, 1933.

A license for non-intoxicating malt liquors may be granted to a licensee of an exclusive liquor store, but not for the same premises. OAG March 27, 1936 (218j-10).

A city has authority to issue a license for a concession on fair grounds within the city limits, though the concession is upon property of the county. OAG July 20, 1937 (217b-1).

A wholesaler must secure a license where the business is situated. OAG March 22, 1934.

A wholesale dealer must secure an "off sale" license from the municipality where place of business is located, and need not obtain a license in another municipality where it sells beer. OAG April 8, 1936 (217h).

The only license required of a wholesale dealer is the "off sale" license provided for in this section, and it is not necessary to purchase the "off sale" license contemplated in section 3200-6(b) [340.02(2)]. OAG April 8, 1936 (217h).

A city, as a condition of granting of beer license, may require an applicant to sign a waiver of his rights as to searches and seizures. OAG June 20, 1933.

The city of Minneapolis has authority to grant an "on sale" license at the soldiers home. OAG June 6, 1933.

A person selling malt liquors in various places in a village must obtain separate licenses for each establishment. OAG April 13, 1933.

Licenses are issued for a certain place of business and sales thereunder cannot be had at another place unless the village council transfers the license. OAG Oct. 31, 1935 (217b-7).

Council can grant a license to a member of the council or to an officer of the village, if such person takes no part in the granting of the license. OAG June 5, 1934 (218g); OAG Aug. 3, 1934 (217b-6).

A village council may require applicant to close at a certain hour as a condition precedent to the issuance of a license. OAG Dec. 11, 1935 (471p).

A partnership operating a business in a village is entitled to a license under an ordinance limiting licenses to residents, though some of the partners live outside the village. OAG April 15, 1933.

A town board member may receive a license, if not voting on his application. OAG May 25, 1933 (217b-8).

The act of the county board in refusing to grant a beer license must not be wilful, arbitrary, or capricious, nor because of personal prejudice, but may be based on any reasonable grounds. OAG June 12, 1944 (217b-8); OAG July 6, 1944 (217b-8).

3. Refusing license.

A municipality cannot issue a wholesaler's license under an ordinance only providing for retail licenses. OAG April 8, 1936 (217H).

A confession of judgment under section 2176-11 [281.47] does not operate as a payment of taxes within the meaning of a resolution of the city council pro-

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hibiting the issuance of malt liquor licenses for places upon which the taxes have not been paid in full. OAG May 4, 1936 (217j).

A license cannot be granted to a dance hall which cannot be classified as a restaurant, hotel, drug store, or bona fide club. OAG May 4, 1938 (217b-8).

A village council may refuse to grant a license without giving any reason therefor. OAG Dec. 11, 1935 (471p).

It was arbitrary and unlawful for a village council to deny a license to an owner and operator of a hotel because he had a liquor license for the same place. OAG Aug. 4, 1939 (218g-5).

A town board cannot arbitrarily refuse to issue or approve an application for license, and a county board cannot issue without the approval of the town board. OAG June 29, 1936 (217b-8).

The board may, on due hearing, revoke the license of one having a 3.2 beer license, and who operates "an undesirable establishment, where there have been several assaults, and much disorderly conduct, but no conviction for law violation." 1942 OAG 169, October 21, 1941 (217-B-9).

4. Revoking license

A resolution of the county board to revoke licenses without notice is valid. OAG June 2, 1934 (218g-14).

A county board may pass a resolution which automatically revokes licenses upon a conviction of a licensee for a violation of the license and upon a conviction for a felony. OAG July 2, 1936 (240u).

A county board may revoke a 3.2 beer license after notice and hearing. Due notice of the cause for revoking his license must be given the licensee, and a hearing must be granted him, and the board must not act arbitrarily or unreasonably. 1942 OAG 169, Oct. 21, 1941 (217b-9).

A license cannot be revoked by a county board merely because a delegation appeared before it in opposition to a license already granted. OAG April 24, 1935 (217b-8).

A city council is not compelled to revoke a license for violation of an ordinance. OAG April 2, 1935.

A city council may pass an ordinance permitting the revocation of malt liquor licenses without notice. OAG Jan. 25, 1935 (217b-1).

5. License fees

License money collected by a county belongs to the county and should be credited to the county revenue fund. OAG April 15, 1933.

A county has no right to impose an additional license fee in municipalities which have granted "on sale" licenses. OAG April 10, 1933.

A county can fix fee for license for each individual case, depending upon the facts and circumstances. OAG April 15, 1933.

Although a county board has authority to fix a lesser fee for licenses to bona fide clubs than for other types of business, the fee must be uniform for all licenses of the same class, and a license cannot be donated to a club. OAG Aug. 3, 1934 (217b-2).

A village may limit sales by wholesalers to retail dealers, but cannot impose a fee other than that paid by retailers for "off sale" license and a wholesaler licensed in one municipality can sell in other municipalities without any additional license. OAG March 19, 1934.

City, instead of imposing a regular license fee on "on sale" vendors may collect a percentage, based on sales, from such vendors, in the form of a sales tax. OAG April 11, 1933.

Graduated license fees based on sales may be imposed. OAG July 10, 1934 (217b-7).

A town board does not have authority to impose a fee for its approval of an application for a license. OAG March 2, 1938 (217b-8).

No refund can be granted where a license is surrendered before the expiration of its term. OAG April 20, 1933.

6. Regulations

An ordinance under which a license is granted may be amended so as to impose different regulations. OAG Aug. 2, 1933.

An ordinance imposing residence requirements of one year would be valid. OAG July 17, 1935 (217c).

A licensing body may not make a regulation defining "sale" to include all barter, gifts, and all means of furnishing and serving malt liquor, but it may prohibit the giving or bartering of malt liquors by a licensed vendor. OAG Dec. 18, 1936 (217f-3).

A restaurant holding intoxicating liquor licenses may obtain 3.2 beer licenses and remove all hard liquor from premises, and sell beer on Sunday. OAG Dec. 15, 1938 (217f-2).

During prohibited hours, holder of an "on sale" license for the sale of non-intoxicating malt beverages may not sell 3.2 beer by the bottle or any other way. OAG June 5, 1939 (218g-6).

County board is authorized to provide rules and regulations relating to the sale of malt liquors outside cities, villages, and boroughs, such regulations to be embodied in resolution. OAG June 15, 1936 (217b-2).

A county board may prohibit dancing in places where non-intoxicating malt liquors are sold. OAG April 23, 1934 (802a-17).

County board may regulate the closing hours for the sale of malt liquor. OAG July 16, 1937 (217f).

A county board cannot delegate authority to regulate to a town board. OAG May 10, 1938 (218i).

A city has authority to pass an ordinance regulating the closing hours of all places of business, including restaurants, that dispense non-intoxicating malt beverages, and may do this during the life of licenses. OAG July 25, 1934 (217b).

A city of 5,000 or more may prohibit dancing in a place where non-intoxicating malt liquors are sold. OAG April 23, 1934 (802a-17).

The city of Two Harbors may regulate the sale of malt to minors. OAG May 8, 1933.

A village may by ordinance provide that no license shall be issued to any person or corporation established in the village for less than one year. OAG June 24, 1935 (217b-7).

For valid reasons a village may prohibit the sale of malt liquors earlier in residential districts than in business districts. OAG May 29, 1935 (217b-7).

Village council may limit the number of licenses. OAG Oct. 7, 1937 (218g-11).

Village council has the right to determine the number of licenses, the license fee, and the approval of transfers. OAG March 25, 1937 (217b-7).

A village council may enact an ordinance prohibiting sale to habitual drunkards. OAG May 4, 1937 (218i-3).

A village council may regulate the opening and closing hours of a restaurant selling non-intoxicating malt liquors, but may not do so where certain beverages are not sold. OAG Sept. 23, 1936 (477b-35).

A village may, within reasonable limitations, regulate the closing and opening hours of restaurants, chicken shacks, and night clubs and provide reasonable regulations upon which vendors may sell non-intoxicating malt beverages. OAG April 24, 1934 (477a).

Villages can regulate closing hours of restaurants but not drug stores, etc., and may extend closing hours and hours of sale of malt liquor provided the extension is uniform for all businesses regulated. OAG June 2, 1936 (477b-35).

A town board cannot regulate closing hours and cannot be delegated that authority by county board. OAG May 12, 1938 (434a-10).

A town board cannot pass a by-law prohibiting the sale of beer after 12:00 P. M. and on Sunday, its only authority being approval or disapproval of applications for license. OAG Dec. 11, 1933.

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There is no particular reason why the activity of a school district in furnishing soft drinks to school children in its cafeteria should be regulated. 1942 OAG 39, September 24, 1942 (634-D).

County boards may, by regulation, prohibit the admission of persons under 21 years to taverns. OAG April 15, 1944 (217f-3).

7. Violations

The court has the power to enjoin the sale of 3.2 beer upon premises where there have been persistent violations of the liquor laws if it is necessary to do so in order to prevent the illegal sale of intoxicating liquor. *State v Preuss*, 217 M 100, 13 NW(2d) 774.

It is optional to prosecute under the state law or the village ordinance. OAG Jan. 20, 1936 (218f).

A county board cannot hire an investigator to enforce a regulation, this being the duty of the sheriff. OAG Aug. 1, 1935 (218f-2).

A gift of malt liquor to those buying dance tickets after closing hours constitutes a sale. OAG July 30, 1935 (510-1).

An ordinance merely prohibiting the sale of malt liquors after midnight does not render it an offense to give away liquor after that hour. OAG July 11, 1935.

If it is found that a federal liquor dealer's special tax stamp has been issued to a non-intoxicating malt liquor licensee, the license may be revoked. OAG May 18, 1944 (217b-9).

340.02 UNLAWFUL TO SELL UNLESS LICENSED.

HISTORY. 1933 c. 116 s. 2; M. Supp. s. 3200-6; 1943 c. 459 s. 1; 1945 c. 595 s. 1.

Where dining room and cafe are part of the accommodations of hotel and under the same ownership, one license is sufficient. OAG April 1, 1933.

One operating a hotel and a drug store in the same building and serving meals both in the hotel and in the drug store from one kitchen must secure "on sale" and "off sale" license for both. OAG April 13, 1933.

State must have a license to sell 3.2 beer on state property or in state parks, and a license may not be granted by the park board of Two Rivers state park. OAG June 12, 1939 (217f-1).

Vendors at a resettlement camp must have a license to sell. OAG March 12, 1937 (218j-19).

Non-intoxicating malt liquors may not be sold, without a license, at a canteen at a WPA camp on a federal project located on state property. OAG March 2, 1939 (218j-19).

A village cannot impose additional license fees on wholesalers and manufacturers, though the ordinance is based upon the public health provisions of the law, to afford the village an opportunity of having a chemical analysis of the beer or the liquor. OAG June 8, 1937 (218g-12).

An incorporated community park in a village may be granted an "off sale" license but may not be issued an "on sale" license unless there is operated thereon a drug store, restaurant, or bona fide club. OAG May 23, 1933.

One operating a lunch wagon traveling from place to place may obtain only an "off sale" license, to be approved by the town board of each town in which he makes any sales, and he must also procure separate licenses from each village or city. OAG May 26, 1933.

One selling to members of a club must have a license. OAG Aug. 26, 1935 (217b-8).

A golf club could take no part in the selling of beer at its club house but its members may purchase beer from any restaurant, paying for the same at the time of purchase, and have such beer cared for by the manager of the club house. OAG May 23, 1933.

An exclusive liquor store may sell non-intoxicating malt liquors at "off sale" under Laws 1937, Chapter 421, but not at "on sale", providing an "off sale" license is obtained. OAG May 27, 1937 (218j-10).

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An "on sale" license does not permit "off sale" transactions in non-intoxicating malt liquor. OAG May 20, 1939 (218j-8).

International Falls has authority to grant an "on sale" non-intoxicating malt liquor license covering the same premises and issued to the same party holding an intoxicating "on sale" license. OAG May 5, 1937 (218g-6).

It is not permissible for a person to sell 3.2 beer by the bottle if he has a federal license, but no "on sale" or "off sale" license from the municipality wherein he wishes to sell the beer. OAG Oct. 22, 1934 (217b-8).

Under a license to a beer parlor on Lot 5, beer could not be furnished in a restaurant on Lot 6, unless the beer parlor and restaurant are a part of the same establishment. OAG Jan. 21, 1936 (217b-8).

Where a county board has not availed itself of its authority to license and regulate the sale of malt liquors, an unlicensed vendor violates the law by making sales. OAG Aug. 9, 1935 (218g).

A lodge may give away beer at a dance where there is no intention to evade the law requiring license. OAG July 15, 1933.

A hotel does not need to serve food in order to entitle it to a license for the sale of beer. OAG July 24, 1933.

The word "premises" as applied to a hotel means the entire hotel so that liquor consumed in a hotel room is consumed on the "premises". OAG April 7, 1933.

A hotel must have an "on sale" license in order to deliver malt liquors to a guest's room. OAG April 10, 1933.

The owner of a hotel and a drug store in the same building must procure "on sale" and "off sale" licenses for both the hotel and the drug store in order to sell malt liquor "on sale" and "off sale" in both places; in such case there would be two separate "premises", though the drug store be located in the hotel building and under the same management. OAG April 13, 1933.

A store designated as a "drug store" operated by one who is not a registered pharmacist and who has none in his employ, and which sells proprietary drugs, but fills no prescriptions, is not a "drug store" to which an "on sale" license may be granted. April 3, 1933.

Where one man operates a building containing sleeping quarters, a restaurant, and a pool room, he may not sell malt liquor in the restaurant portion to a patron of the hotel to be carried by the purchaser to the pool room and there consumed, nor can a hotel proprietor, under an "on sale" license, sell liquor in pool room to be consumed in such room. OAG June 23, 1933.

One operating a bona fide club may sell beer in several parts of the same building under one license. OAG June 29, 1933.

What constitutes a club entitled to a beer license is a question of fact which must be decided by the local governing body and not by the attorney general. OAG April 7, 1937 (217f-2).

Whether a night club is a restaurant entitled to sell beer is a question of fact. OAG Dec. 22, 1933.

Whether the second floor of a building is a part of the restaurant premises on the first floor is a question of fact. OAG Nov. 17, 1936 (217f-2).

Whether a particular place of business is a restaurant is primarily a question of fact for the governing body of the municipality issuing licenses, but the length of time the business has been in existence or the period of its future duration is not controlling. OAG June 26, 1933.

A summer resort keeper will not be permitted, under an "on sale" license to sell and dispense beverages in a place separate from that where meals are served. OAG May 18, 1933.

Where a summer resort maintains a main lodge and cabins an "on sale" license is necessary for the sale in the main lodge for consumption in the cabins. OAG April 15, 1933.

A county may not impose an additional license fee in municipalities located within the county, which have granted "on sale" licenses to dealers. OAG April 10, 1933.

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A license for the sale of malt liquor may not be granted to a legion post unless it is in fact a club. OAG March 23, 1934.

"On sale" licenses may not be granted to dance halls, though lunches are sold at dances. OAG April 8, 1933.

A passenger launch is not entitled to an "on sale" license. OAG May 10, 1933.

A pool room is not entitled to an "on sale" license. OAG June 15, 1933.

A county fair association is not entitled to receive an "on sale" license for the sale of beer. OAG June 21, 1933.

A grocery store may not have an "on sale" license. OAG June 15, 1934 (218g).

Where a father buys beer in an "on sale" place for himself and a minor son, the sale is to the father, and legal. OAG April 10, 1933.

The only license required of a wholesale dealer is the "off sale" license provided for in section 3200-5 [340.01], and it is not necessary to purchase the "off sale" license contemplated in section 3200-6(b) [340.02(2)]. OAG April 8, 1936 (217h).

A wholesaler must have an "off sale" license from the municipality where his distributing plant is located. OAG April 7, 1933.

A wholesale distributor holding an "off sale" license from the municipality where its distributing plant is located may sell to licensed dealers any place in the state without obtaining further licenses, but if a wholesale distributor sells direct to consumers a license must be obtained from each municipality in which such sales are made. OAG April 10, 1933.

Agencies for the sale of beer which are branch offices of the manufacturer may make sales without licenses from municipalities, but agencies which are distributors or wholesalers must have "off sale" licenses from the municipality in which the distributing plant is situated. OAG April 1, 1933.

A wholesaler, if licensed in the jurisdiction where he maintains a place of business, may sell, without further license, in other jurisdictions where he maintains no place of business. *Bernick v City of Little Falls*, 191 M 128, 253 NW 369.

As used in this act, the words "original package" mean the package in which the non-intoxicating malt liquor was received by the dealer and distributor, the usual and customary manner of delivery being in kegs and cases. OAG April 1, 1933.

The test as to "original packages" is the unit in which bottles of beer are packed for transportation purposes, and the number of bottles is not a material element. OAG May 19, 1933.

Beer cannot be sold by the bottle on an "off sale" license unless shipped individually as an original package. OAG June 6, 1933.

An original package of malt liquors may contain either one or more bottles packed in a carton or case, but such carton or case may not be packed in larger containers. OAG June 15, 1933.

There is no limit to the amount of beer that may be sold at one time by a holder of an "off sale" license. OAG July 12, 1933.

There is nothing in the state law to prevent a restaurant owner with an "off sale" license to sell beer in lots of 15 or 20 cases at a time, though the indications point to the fact that he may represent some brewery and notwithstanding that it is unfair as to an agent of another brewing company required to pay greatly larger fee of a distributor. OAG Dec. 6, 1933.

One is not permitted to sell beer out of a keg to be carried off the premises in a container. OAG May 26, 1933.

A storekeeper, also owning cottages on an adjoining lot, could take out an "off sale" license. OAG June 5, 1933.

A grocery store or any other business may have an "off sale" license. OAG June 5, 1934 (218g).

A hotel which does not desire to serve liquors in its dining room may not get along with an "off sale" license and serve liquors to guests in their rooms. OAG April 10, 1933.

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A summer resort owner may not sell beer to cabins under an "off sale" license, but he may sell unopened beer to renters of boats for consumption on lake. OAG May 18, 1933.

A city may pass an ordinance providing for the licensing of distributors of non-intoxicating malt liquors, if they are independent wholesalers, but not if they are mere agents of manufacturers. OAG April 14, 1938 (217c).

A manufacturer has a right to sell direct to consumer in a municipality without a license, but manufacturers or their agents cannot sell malt liquors to consumers from warehouses or trucks parked on the streets. OAG April 24, 1933; OAG April 27, 1933.

A manufacturer or his agent may sell to consumers in municipalities where no regulations are in effect permitting sales under licenses or granting license. OAG April 24, 1933.

A city may not prohibit the sale of non-intoxicating malt liquor by a manufacturer. A village may not require a manufacturer to obtain a license to sell beer in lots of not less than two gallons. OAG April 27, 1933.

A foreign manufacturer of malt liquor may maintain a distributing plant in the state and sell to consumers in quantities exceeding two gallons without obtaining an "off sale" license. OAG July 1, 1938 (217h).

340.021 CLOSING HOURS FOR SALE OF NON-INTOXICATING LIQUORS.

HISTORY. 1939 c. 402 s. 1; M. Supp. s. 3200-10a.

The evidence sustains a conviction for keeping a beer parlor open at an unlawful time early Sunday morning. *City of St. Paul v St. Aubin*, 201 M 208, 275 NW 623.

Act does not prohibit a licensee from conducting other lawful business in his establishment during the closing hours specified. OAG May 8, 1939 (218g-6).

During prohibited hours the holder of an "on sale" license may not sell beer by the bottle to be consumed on or off the premises. A person holding an "on sale" non-intoxicating malt liquor license may not sell non-intoxicating malt beverages, including beer of 3.2 or less, by the bottle or any other way during prohibited hours. OAG May 25, 1939 (218j-8).

The holder of a liquor license, who also has a 3.2 beer license, may sell 3.2 beer on Sundays on hours allowed by state law if he has totally removed all hard liquor from the premises. OAG Sept. 14, 1939 (218j-8).

This act does not affect the rights of a licensee which he enjoys by virtue of an "off sale" license, and his rights and privileges are not limited by the fact that he also holds an "on sale" license. OAG June 16, 1939 (218j-8).

In prosecution of a violation of section 340.02 the manufacturer rather than the truck driver should be prosecuted. The facts may sustain a prosecution of the driver. 1942 OAG 170, October 1, 1941 (217-N).

Municipal liquor stores may sell both intoxicating liquor and 3.2 beer without obtaining a license. OAG January 20, 1944 (218j-10).

340.022 MUNICIPALITIES MAY NOT EXTEND CLOSING HOURS.

HISTORY. 1939 c. 402 s. 2; M. Supp. s. 3200-10b.

A city or village may adopt an ordinance fixing closing hours earlier but not later than those prescribed by the act. OAG May 25, 1939 (218j-8).

340.023 VIOLATIONS OF SECTIONS 340.021 AND 340.022.

HISTORY. 1939 c. 402 s. 3; M. Supp. s. 3200-10c.

340.024 SHERIFF'S CONTINGENT FUND ESTABLISHED.

HISTORY. 1939 c. 111; M. Supp. s. 3200-84.

340.025 LICENSES FOR SALE OF MALT AND INTOXICATING LIQUOR.

HISTORY. 1939 c. 138 s. 1; M. Supp. 3965-19.

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3.2 per cent beer licenses may be summarily revoked, without formal notice or hearing, where the licenses have federal retail liquor dealers' special tax stamp, and the board would be justified in requiring definite proof to show that the stamp had been invalidated for the remainder of its duration. OAG May 1, 1939 (217b-10).

The physical destruction of a federal retail liquor dealers' special tax stamp by the owner thereof does not make him eligible to obtain a 3.2 per cent beer license. OAG May 2, 1939 (217b-10).

340.026 3.2 LICENSEE SHALL NOT DISPLAY FEDERAL RETAIL TAX STAMP; VIOLATION.

HISTORY. 1939 c. 138 s. 2; M. Supp. s. 3965-20.

The court found that the club had a federal liquor stamp, but no license to sell beer or liquor. Federal liquor stamps are not required except where the possessor intends to sell liquor. An injunction was proper. *State v Sportsmen's Club*, 214 M 158, 7 NW(2d) 495; *State v Pruess*, 217 M 102, 13 NW(2d) 774.

340.03 UNLAWFUL TO SELL TO PERSONS UNDER 21 YEARS OF AGE.

HISTORY. 1933 c. 116 s. 3; M. Supp. s. 3200-7; 1945 c. 161 s. 1.

An ordinance prohibiting sale to students is invalid so far as it applies to student over 21 years of age. A city ordinance prohibiting the sale of non-intoxicating malt liquors to students over 21 years of age would be invalid. OAG April 11, 1933.

The sale of non-intoxicating malt liquor to a minor is a misdemeanor. OAG July 10, 1939 (218j-12).

It is not necessary to prove intention under an ordinance prohibiting sale to a minor. OAG June 22, 1937 (494b-21).

Proprietor is not liable for sale to a minor by a clerk, though present at the time, unless he had knowledge of or consented to such sale. OAG July 7, 1939 (218j-12).

The phrase "such liquor" refers to non-intoxicating malt liquors, and there is no violation of the statute where a sale is made to the parent of a minor who gives it to the minor, but the act does not permit a direct sale of liquor to minor accompanied by parent or guardian. OAG May 16, 1939 (218j-12).

It is permissible to sell beer to an older person and permit him to treat a minor, but if the older person buys for a minor and the minor pays him therefor, such older person would be guilty of two offenses, one in making a sale to a minor, and another in selling without a license. OAG July 31, 1933.

A sale of beer to one who gives it to his minor son is legal. OAG April 10, 1933.

Sale of malt liquors to an adult to give it to a minor child is not in violation of this section. OAG July 11, 1935 (217f-3).

A person under 21 years of age may be employed to sell beer. OAG May 31, 1933.

Minors under age of 18 cannot work in a place where non-intoxicating liquors are sold. OAG Sept. 24, 1936 (217f-3).

Minors under 18 years of age may not serve non-intoxicating malt liquors in a restaurant. OAG July 26, 1937 (217f-3).

340.04 DURATION OF LICENSES.

HISTORY. 1933 c. 116 s. 4; M. Supp. s. 3200-8; 1941 c. 502.

Licenses should not be used for a shorter period than one year, unless it is to carry out the requirements of having all licenses expire at the same time. 1942 OAG 165, April 24, 1941 (218g).

If license was issued for less than one year for the purpose of coordinating expiration date of all licenses, a pro rata reduction may be made. OAG April 18, 1933.

New application for license must be made each year. OAG March 26, 1934.

County boards may legally prohibit the admission to taverns of persons under the age of 21 years. OAG April 15, 1944 (217f-3).

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340.05 PENALTY.

HISTORY. 1933 c. 116 s. 5; M. Supp. s. 3200-9.

The illegal acts of the defendant, in the instant case, are declared to be crimes. *State v Sportsmen's Club*, 214 M 155, 7 NW(2d) 495.

If a manufacturer sells non-intoxicating malt liquor to an unlicensed dealer in a municipality, the law is violated and the offender is guilty of a misdemeanor. If the offending manufacturer is a corporation, then it, rather than the truck driver who actually delivered the liquor, should be prosecuted. Under some circumstances the truck driver might be equally guilty. 1942 OAG 170, Oct. 1, 1941 (217h).

County attorney does not owe duty to prosecute violation of a malt liquor law consisting of the sale of such liquor in a village refusing to grant licenses. OAG Oct. 31, 1933.

One selling liquor without the license required by a village ordinance may be prosecuted either under the state law or under the ordinance. OAG Nov. 15, 1934 (217e-2).

A violation of section 3200-7 [340.03] would be cause for a revocation of license. OAG May 16, 1939 (218j-12).

340.06 NON-INTOXICATING MALT LIQUORS EXCLUDED.

HISTORY. 1933 c. 116 s. 6; M. Supp. s. 3200-10.

There is now no law authorizing enforcement officers to make search for intoxicating liquors, but detectives may be retained for the purpose of making purchases and their evidence would be admissible. OAG May 15, 1933.

This act supersedes a provision in the South St. Paul home rule charter in so far as it relates to the licensing and regulating of the sale of non-intoxicating malt liquors. OAG May 18, 1933.

340.07 LIQUOR CONTROL; CONSTRUCTION OF TERMS.

HISTORY. 1849 c. 8 s. 4; R.S. 1851 c. 21 s. 4; P.S. 1858 c. 18 s. 4; 1861 c. 53 s. 1; G.S. 1866 c. 16 s. 11; 1877 c. 44 s. 2; G.S. 1878 c. 16 s. 11; 1887 c. 6 s. 7; 1887 c. 81 s. 2; 1889 c. 105 s. 1; G.S. 1894 s. 2000; R.L. 1905 s. 1564; 1911 c. 204 ss. 1 to 3; 1913 c. 387 s. 1; G.S. 1913 ss. 3131, 3143 to 3145, 3188; 1919 c. 455 s. 1; Ex. 1919 c. 65 s. 1; 1921 c. 335 s. 1; 1921 c. 391 s. 1; 1923 c. 393 s. 2; 1923 c. 416 s. 1; G.S. 1923 ss. 3200, 3229, 3238; 1925 c. 221 s. 2; M.S. 1927 s. 3238-2; 1929 c. 249 s. 2; 1931 c. 83 s. 1; 1931 c. 305 s. 1; 1933 c. 115 s. 1; Ex. 1934 c. 46 s. 1; 1937 c. 421 s. 1; 1939 c. 101 s. 1; M. Supp. s. 3200-21.

1. Generally
2. Intoxicating liquors
3. Gifts
4. Off-sale
5. On sale
6. Original package
7. Wholesale dealer
8. Person
9. Hotel
10. Exclusive liquor store
11. Restaurant
12. Club
13. Medicines

1. Generally

One who buys for another at his solicitation and as his hired agent and with his money and for his use, in good faith and not as a subterfuge or by way of evasion, does not commit the offense of selling. *State v Wallenberg*, 158 M 251, 197 NW 276.

The adoption of the 21st amendment to the federal constitution did not render other constitutional provisions inapplicable to intoxicating liquor. *Joseph Triner Corp. v Arundel*, 11 F. Supp. 145.

All liquor regulations existing prior to the enactment of Ex. Laws 1933, Chapter 46, were not repealed by implication by that act. *State v Sobelman*, 199 M 232, 271 NW 484.

There is no statute prohibiting the sale of neutral spirits 100 proof or less or ethyl alcohol. OAG Jan. 18, 1939 (218j).

The fact that an act which is a violation of a municipal ordinance is also an indictable offense under state law does not prevent a summary trial and a conviction for the former without the right of a trial by a jury. *State ex rel v Anderson*, 165 M 150, 206 NW 51.

An ordinance of the city of Minneapolis, prohibiting the manufacture of intoxicating liquors within the city, is not superseded or rendered inoperative. *State v Denner*, 159 M 189, 198 NW 430.

A city ordinance regulating liquor traffic is not inconsistent with the general law merely because penalties in the former are less than in the latter. *City of Duluth v Evans*, 158 M 450, 197 NW 737.

Violations of the OPA regulations by holder of liquor license in selling or offering to sell liquors above ceiling prices is misconduct justifying revocation of his license. *Moskovitz v City of St. Paul*, 218 M 544, 16 NW(2d) 745.

A council may reconsider its action in granting an "on sale" license and may revoke its action in granting such a license without cause shown. 1942 OAG 164, June 24, 1941 (218g-6).

Searches for illegal liquor in a dry county are not authorized. OAG Dec. 28, 1936 (218f-3).

Intoxicating liquor cannot be raffled off at a bazaar or given as a prize in a drawing. OAG May 5, 1934 (218).

Confiscated liquors may be sold under an order of a court and need not be destroyed. OAG March 6, 1934.

2. Intoxicating liquors

The court will take notice, from the commonly accepted definition of the word "brandy" that it is a spiritous and intoxicating liquor, whether it be French brandy, California brandy, or any other. *State v Tisdale*, 54 M 105, 55 NW 903.

Courts and juries will take knowledge of the fact that whiskey and brandy are intoxicating liquors. *State v Lewis*, 86 M 174, 90 NW 318.

Beer is a fermented liquid, made from malted grain, and has different names, such as ale, porter, brown stout, lager, and small beer, according to its strength and other qualities. It is not a spiritous liquor. *State v Quinlan*, 40 M 55, 41 NW 299.

Proof of the drinking of what appeared to be spiritous, vinous, malt or fermented liquor is prima facie evidence that it was intoxicating liquor. *State v Dick*, 47 M 375, 50 NW 362.

The intoxicating quality of "maltum" has been held a question for the jury. *State v Story*, 87 M 5, 91 NW 26; *State v Gill*, 89 M 502, 95 NW 449.

Evidence showing that the liquor was potable and intoxicating is sufficient to sustain a verdict convicting defendant of keeping a place where intoxicating liquor was sold contrary to a city ordinance. *City of Duluth v Nordin*, 166 M 466, 208 NW 189.

Evidence showing that defendant sold alcohol and that it was potable as a beverage will support a conviction upon a charge of selling intoxicating liquor. *State v Miller*, 166 M 116, 207 NW 19.

An information charging the defendant with a sale of "intoxicating liquor for beverage purposes" imports that the liquor was potable as a beverage and the testimony of a witness who drank some of the liquor and knew that it contained alcohol and was intoxicating is sufficient to sustain a conviction for an unlawful sale. *State v Ruddy*, 160 M 435, 200 NW 631.

In a prosecution under an ordinance prohibiting possession of intoxicating liquor for sale, proof that the liquor was "moonshine" was sufficient proof that the liquor was an intoxicating beverage. *State v Tremont*, 160 M 314, 200 NW 93.

It is not necessary to have the liquor analyzed by a chemist to prove that it is intoxicating or that it is potable. Proof of the potability and intoxicating quality of the liquor may be supplied by the testimony of any one competent to speak on the subject. *State v Unlauf*, 169 M 422, 211 NW 475.

3. Gifts

A gift of liquor to a prospective purchaser by a traveling salesman of a licensed liquor dealer is unlawful under General Statutes 1894, Section 2029. *State ex rel v Jones*, 88 M 27, 92 NW 468.

The penalty of a statute which prohibits the gift of intoxicating liquor to a minor for consumption as a beverage cannot be escaped by a showing that the gift was made in a spirit of hospitality or good fellowship. *State v Stock*, 169 M 364, 211 NW 319.

A gift of liquor held unlawful under an ordinance making it unlawful to "dispose" of liquor without a license. *State v Deusting*, 33 M 102, 22 NW 442.

An instruction not objected to or challenged on appeal that no person can give liquor to another became the law of the case. *State v McCarthy*, 159 M 49, 197 NW 961.

4. Off Sale

One holding an "off-sale" license may ship or deliver liquor in other wet counties, but cannot mail it. OAG March 6, 1934.

One having an "off sale" license is guilty of the crime of selling as a wholesaler where he sells an original package to one who he has reason to know will resell the same. OAG July 23, 1935 (217d).

5. On Sale

A village council may permit patrons to drink at a bar. OAG Feb. 13, 1934.

All license fees, whether "on sale" or not, are fixed on the basis of a period of one year, and licenses should not be issued for shorter periods, unless it is to carry out the requirements of having all licenses expire at the same time. 1942 OAG 165, April 24, 1941 (218g).

6. Original package

The term "original package" refers to individual bottles or other containers rather than to packages containing a number of individual bottles or other containers. OAG July 23, 1935 (217d).

7. Wholesale dealers

A commission driver who takes on a load of liquor and sells from retailer to retailer, obtaining a commission on each sale, is a wholesale dealer as are also persons accepting merchandise for consignment for re-sale. OAG Jan. 10, 1934.

8. Person

A license may be issued to a partnership. OAG Feb. 13, 1934.

A corporation may be the owner of an exclusive liquor store. OAG May 22, 1934 (218g-13).

9. Hotel

A license to sell in a hotel must be issued to the owner of the hotel and not to a lessee of space therein. OAG May 15, 1935 (218g-17).

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A hotel having an "on sale" license can dispense 3.2 per cent beer. OAG March 23, 1934.

A hotel with an "on sale" license is permitted to sell cigarettes, candy, cigars, etc. OAG March 23, 1934.

Sales are not limited to patrons seated at tables, stools, or benches. OAG June 22, 1937 (218j-7).

A dining room must be operated and controlled by the same management that operates and controls the hotel proper. OAG Jan. 29, 1934.

10. Exclusive liquor store

The court has power to enjoin the sale of 3.2 beer upon premises where there have been persistent violations of the liquor law if it is necessary to do so in order to prevent the illegal sale of intoxicating liquor. *State v Preuss*, 217 M 101, 13 NW(2d) 774.

An exclusive liquor store may not sell tobacco, ice cream, soft drinks, non-intoxicating beer, etc. OAG Jan. 11, 1934.

A cigarette license should not be granted to an exclusive liquor store. OAG March 26, 1934.

An exclusive liquor store in St. Peter may sell cigarettes, cigars, tobaccos, and soft drinks, but cannot serve light lunches. OAG Aug. 23, 1937 (218g-1).

An exclusive liquor store may sell cigars, cigarettes, and all form of tobacco, but cannot sell non-intoxicating malt liquor. OAG July 5, 1938 (218j-10).

Cigars may be sold in a municipal liquor store. OAG July 11, 1938 (218g-13).

An exclusive liquor store can sell only intoxicating liquors. OAG Feb. 13, 1934; OAG Feb. 27, 1934.

The sale of intoxicating liquors from an exclusive liquor store cannot be made on the same premises as the sale of drugs and other merchandise sold in such store, and there should be separate entrances and a partition which would constitute a complete division of the two stores. OAG Feb. 8, 1938 (218g-13).

An exclusive liquor store is authorized to conduct a retail business only. OAG April 19, 1934 (218g-8).

A proprietor of a hotel having a license for an exclusive liquor store may not sell liquor in the cafe part of the hotel. OAG May 22, 1934 (218j-10).

An exclusive liquor store is authorized to sell non-intoxicating malt liquor at "off sale" but not at "on sale", but it must obtain a malt liquor license. OAG May 27, 1937 (218j-10).

The amendment by Laws 1939, Chapter 101, permits the sale of 3.2 beer by an exclusive liquor store. OAG June 2, 1939 (218j-10).

A hotel proprietor holding an "on sale" license may also hold an "off sale" license by virtue of being the owner of an exclusive liquor store, but the exclusive store cannot be operated in the hotel. OAG Aug. 23, 1937 (218g-1).

An exclusive liquor store cannot be operated in connection with a restaurant or any other type of business. OAG Feb. 16, 1934.

An exclusive liquor store must be an independent establishment and not run in connection with any other business, and a store-keeper running a liquor store next door should not have a doorway between. OAG June 3, 1935 (218h-13).

An exclusive liquor store must be separated from restaurant. OAG Aug. 18, 1934 (218g-13).

An exclusive liquor store must be a separate and distinct premise from any other business and it would appear advisable that there be no connecting door between a liquor store and cafe. OAG Jan. 29, 1934.

An exclusive liquor store and cafe could use the same washroom. OAG Jan. 29, 1934.

There should be no doorway between an exclusive liquor store and a garage sample room. OAG Jan. 29, 1934.

Villages in dry counties cannot operate municipally owned liquor stores. OAG Nov. 17, 1936 (218c-3).

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Before a municipal liquor store may be established in the city of Alexandria, or licenses to sell liquor therein may be issued, and affirmative vote of the electors of Douglas county must first be received at a special election held under sections 3200-40 [340.25] et seq. 1942 OAG 175 Oct. 28, 1941 (218g-13).

So far as the state law is concerned a municipal liquor store may be located within 500 feet of a church or a school. OAG Dec. 15, 1938 (218g-13).

Where a council has granted a license to a private party it may refuse to renew the same and establish a municipal liquor store. OAG Sept. 13, 1935 (218j-10).

The electors of a city may vote on the question of issuing licenses, but the city council is to determine whether or not the city shall establish a municipal liquor store or whether licenses shall be issued to private persons. OAG Feb. 7, 1935 (218c-1).

A village may purchase a building for a municipal liquor store without a vote of the people if funds are on hand. OAG March 28, 1935 (476b-1).

A village council has authority to purchase a building in which to house its municipal liquor store without submitting the matter to the electors. OAG June 5, 1936 (471m).

It is not necessary to submit the proposition of establishing a municipal liquor store to the electors. OAG Dec. 29, 1936 (218j-10).

The electors of a village cannot vote on the question of the operation of a municipal liquor store. OAG Feb. 26, 1937 (218c-3).

A village may establish a municipal liquor store without an election, and where one is established no private license can be issued. OAG Jan. 5, 1937 (218c-3); OAG April 5, 1937 (218g-13).

In connection with a local option election a separate ballot could be provided on the question whether or not voters favored a municipal liquor store, but the council would not be bound by the result of the vote. OAG Nov. 23, 1937 (218c-3).

The village of New Brighton may institute condemnation proceedings for the purpose of acquiring land for the site of a municipal liquor store without first submitting the proposition to a vote of the people. 1942 OAG 174, April 8, 1942 (218r).

A village operating a municipal liquor store cannot lease a building owned by a member of the council. OAG Jan. 21, 1936 (217b-8).

A village councilman cannot be employed in an exclusive liquor store operated by the village. OAG April 4, 1935 (218g-13).

A member of the council cannot work in a municipal liquor store, and the expenses of the store and the purchase price of liquor must be paid in the same manner as other village expenses. OAG March 1, 1937 (218i-2).

All revenue from a municipal exclusive liquor store should be turned over to the village treasurer by the manager of the store and disbursed in the same manner as other village money. OAG July 25, 1934 (218e).

All expenditures of an exclusive liquor store operated by a village should be approved by the village council and paid in the same manner as other village expenditures. OAG April 4, 1935 (218g-13).

All employees of a municipal liquor store must be hired by the council, and it cannot delegate its powers to a committee or to an individual, except that such committee or individual acts as an agent of the council to see that its orders are obeyed and make recommendations to the governing body. OAG Jan. 21, 1936 (217b-8).

A village councilman who is a holder of a liquor license cannot vote on the question of whether or not to establish a municipal liquor store. 1942 OAG 162, March 6, 1942 (218g-13).

The village of New Brighton is authorized by law to establish a municipal liquor store. In order to do so it must have a building wherein to conduct the store. It has the power to do what is necessary to carry on such an enterprise, and this includes the right to secure and own land and a building for that purpose, if in the discretion of the village council that is the proper thing to do. The village may exercise the power of eminent domain for the purpose of acquiring a site for a municipal liquor store building. 1942 OAG 174, April 8, 1942 (218r).

If the land for the site of a municipal liquor store is to be acquired by condemnation, it would not be a compliance with the constitutional provision for "just compensation first paid or secured" to give the owner whose property was taken only the right to be paid out of the profits of the store. If the land is to be acquired by purchase, if the purchaser will agree to receive the consideration from the profits of the liquor store alone and no other source, it would not be illegal to make such an arrangement if the property is deeded to the village at once in fee simple and is not a conditional sale reserving title as security. 1942 OAG 174, April 8, 1942 (218r).

The establishment of an exclusive liquor store to be operated by the municipality in a newly incorporated village is unlawful. 1942 OAG 163, April 23, 1941 (218g-13).

Municipal liquor stores do not require a license to sell intoxicating liquor or 3.2 beer. OAG January 20, 1944 (218j-10).

Liability of village for torts of bartenders; right to carry public liability insurance; appraisal of governmental and proprietary functions. OAG August 21, 1944 (218j).

Establishment of a municipal liquor store rests in the discretion of the council; except in those counties, where by general laws of special application the matter must be referred to the electorate. OAG November 6, 1944 (218g-13).

There is no law authorizing payment of a bonus to an employee of a municipal liquor store. OAG Dec. 20, 1944 (218r).

When there is money on hand with which to purchase a liquor store or build a building for a municipal liquor store, no bond election is necessary, and there is no necessity to advertise for bids. OAG Feb. 6, 1945 (218r).

11. Restaurant

An "on sale" license cannot be issued to a restaurant in a village with a population of less than 500. OAG March 6, 1934.

Sales are not limited to patrons seated at tables, stools, or benches. OAG June 22, 1937 (218j-7).

One selling intoxicating liquors would be entitled to sell non-intoxicating malt liquors where he remodeled his place in such manner as to entirely set off one place of business from the other and established a bona fide restaurant in the place in which he desired to sell malt liquors, though both places opened upon a hallway running to bowling alleys operated by the licensee. OAG March 21, 1938 (217f-1).

12. Club

The legislature did not intend that a club must have been situated in one particular building for the entire year. OAG Jan. 20, 1934.

A club is subject to the provisions of the general laws relating to sale, including closing hours and gambling devices. OAG Sept. 24, 1937 (218j-1).

Since licenses for the sale of intoxicating liquors cannot be issued by a town, a license cannot be issued to a club not situated within the limits of a city, village, or borough. OAG Oct. 18, 1937 (218g-9).

A club cannot sell intoxicating liquors without a license. OAG Sept. 5, 1934 (218j-1).

Sales by clubs are not limited to members thereof. OAG Sept. 10, 1934 (218j-1).

Whether or not a golf club with a club house is a "club" which may be granted a license is a question of fact. OAG March 23, 1934.

Members of a club may keep liquors in their lockers without obtaining any license, if the liquor is not for sale. OAG April 18, 1936 (218g-15).

An "off sale" licensee violates the law by selling liquor to the patrons of its golf course, knowing at the time that such liquor was to be consumed in the same building where the sale was made, that is, in the locker rooms or restaurant rooms used by such patrons in the golf course building. 1942 OAG 166, Feb. 24, 1942 (218g-15).

Unless the club license restricts the sale to members of the club, and complies with all the laws relating to licenses for incorporated clubs, the club license must be counted in determining the number of on-sale licenses a village may issue. OAG Jan. 20, 1945 (218g-15).

Permission to use space in the city hall two nights a week would probably be held not a compliance with the rule that suitable quarters for one year be arranged for. OAG Jan. 27, 1945 (218g-15).

Club license permit sale to bona fide members only. OAG Feb. 1, 1945 (218g-15).

13. Medicines

Wine of pepsin is not a medicine. *State v Brown*, 151 M 340, 186 NW 946.

The evidence fails to show that the flavoring extracts and patent medicines sold by plaintiff to be peddled by one of the defendants, even though containing a high percentage of alcohol, were not manufactured and sold lawfully. *Rawleigh Co. v Rutkowski*, 168 M 108, 209 NW 625.

340.08 LIQUOR CONTROL COMMISSIONER.

HISTORY. Ex. 1934 c. 46 s. 2; M. Supp. s. 3200-22.

The payment of premium on the bond of the liquor control commissioner in excess of \$50,000 is not authorized, but the state treasurer may issue liquor and beer stamps in excess of \$50,000 to the commissioner upon his requisition. OAG Nov. 16, 1934 (218h-6).

340.09 OFFICE ASSISTANTS.

HISTORY. 1921 c. 391 s. 6; Ex. 1934 c. 46 s. 3; M. Supp. s. 3200-23; 1945 c. 309 s. 1.

The primary duty of the commissioner under this act is to enforce regulations promulgated by him and to administer the details of issuing licenses, etc., but local officials are charged with the actual duty of enforcing the sale provisions of the act. OAG Aug. 23, 1934 (218h-2).

A violation of a regulation of the liquor control commissioner constitutes a misdemeanor. OAG April 3, 1934 (218f).

Salesman of a wholesale liquor dealer taking orders for liquors without first securing an identification card as required by a regulation of the liquor control commissioner is guilty of a misdemeanor. OAG Jan. 12, 1935 (218f).

Employees of liquor control commissioner may retain fee for testifying in federal court. OAG Dec. 24, 1935 (196r-3).

Power to regulate advertising given the liquor control commissioner and authority given him to make rules and regulations is not an unconstitutional delegation of legislative power, and a violation of a regulation is a misdemeanor. OAG April 15, 1937 (82u).

While the primary duty of enforcing state laws rests upon local authorities, the liquor control commissioner may act independently of local officials, or report violation to local officers and render it their positive duty to prosecute violator, but the sole duty of enforcing city ordinances is imposed on local authorities. OAG Dec. 21, 1937 (218h-2).

At a hearing before the liquor control commissioner in connection with the revocation of a license witnesses are entitled to six cents per mile and \$1.00 per day. OAG June 5, 1937 (218h-7).

Contracts for the printing of certification labels for use in administering the liquor control act are to be let by the state treasurer. OAG March 4, 1938 (454k).

Commissioner may not seize liquor consigned to officers of the armed forces when delivery is to the officers' mess. OAG Oct. 2, 1944 (218h-4).

A contract by which the wholesaler sells to the retail dealer liquor to be delivered in installments by the case, all payments to be in advance as each case is delivered is a valid contract. OAG February 24, 1944, (218j-16).

340.10 PUBLISHING REGULATIONS.

HISTORY. Ex. 1934 c. 46 s. 4; M. Supp. s. 3200-24.

One cannot transport liquor as a favor to another unless he has a vehicle license as provided by regulation. OAG March 5, 1934.

340.11 LICENSES.

HISTORY. 1849 c. 8 ss. 1, 3; 1851 c. 7 ss. 1, 3, 11; R.S. 1851 c. 20 ss. 1, 3, 11; 1852 c. 8 ss. 1, 2, 8; 1855 c. 48 s. 1; 1858 c. 74 ss. 1, 3; P.S. 1858 c. 18 ss. 15, 17; G.S. 1866 c. 16 s. 1; 1867 c. 103 s. 1; 1870 c. 32 s. 1; 1875 c. 112 s. 1; G.S. 1878 c. 16 s. 1; 1887 c. 5 ss. 1 to 3; 1887 c. 6 s. 4; 1887 c. 81 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 ss. 25, 26, 29 to 32, 37; 1893 c. 167 s. 1; 1893 c. 179 s. 1; 1893 c. 189 s. 1; G.S. 1894 ss. 1990, 2017, 2018, 2021 to 2024, 2029; 1901 c. 101 s. 1; 1905 c. 346 s. 2; R.L. 1905 ss. 1519, 1521, 1522, 1527 to 1529, 1546; 1909 c. 75 ss. 1 to 3; 1909 c. 93 s. 1; 1909 c. 283 s. 2; 1911 c. 204 ss. 1 to 3; G.S. 1913 ss. 3109, 3113, 3114, 3120, 3122 to 3125, 3127, 3128, 3138, 3143 to 3145, 3165; 1921 c. 338 s. 1; G.S. 1923 s. 3235; 1933 c. 115 s. 2; Ex. 1934 c. 46 s. 5; 1935 c. 303; 1937 c. 227; 1937 c. 387; 1937 c. 478; Ex. 1937 c. 74 s. 1; 1939 c. 154 s. 1; M. Supp. s. 3200-25; 1941 c. 4; 1941 c. 34; 1941 c. 359; 1941 c. 485; 1943 c. 501 s. 1; 1943 c. 599 s. 1; 1945 c. 8 s. 1; 1945 c. 162 s. 1; 1945 c. 227 s. 1; 1945 c. 247 s. 1; 1945 c. 417 s. 1; 1945 c. 482 s. 1.

1. Generally
2. When required
3. Powers of municipalities to license
4. For sale of 3.2 per cent beer
5. To whom issued
6. Limitation of number
7. On sale and off sale
8. Manufacturers and wholesalers
9. Exclusive liquor stores
10. Hotels and restaurants
11. Fees

1. Generally

After a town has voted against license, pursuant to General Statutes 1878, Chapter 16, Section 1, an indictment may be found against one who sells in the town without license. *State v Funk*, 27 M 318, 7 NW 359.

The fact that a party executed the bond, and tendered the fee required for a license, does not give him the right to sell liquors, unless he got a license. *State v Bach*, 36 M 234, 30 NW 764.

The fact that an applicant for a license had paid the license fee, that the city council had approved his bond and voted him a license, is not equivalent to the actual issuance of a formal license to him, and these facts afford him no defense for selling without a license. *City of Jordan v Bepalec*, 86 M 441, 90 NW 1052.

It is no defense that a license could not be obtained for sales at the place where the sale charged was made. *State v Kantler*, 33 M 69, 21 NW 856.

Laws 1895, Chapter 259, did not repeal by implication prior general statutes prohibiting the sale of intoxicating liquors without a license and the prosecutor may proceed under such prior statutes, although chapter 259 is applicable. *State v Holt*, 69 M 423, 72 NW 700.

An indictment will lie, under General Statutes 1894, Sections 1993, 2029, for selling intoxicating liquor in the village of Claremont, notwithstanding that the village was organized by a special law, and the voters had voted against license according to the provisions of this special law and of Laws 1895, Chapter 259. *State v Arbes*, 70 M 462, 73 NW 403. See also *State v Swanson*, 85 M 112, 88 NW 416.

The general legislation of 1887, concerning and regulating the sale of intoxicating liquors, although applicable to cities, did not have the effect of repealing by

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implication existing municipal ordinances upon the subject, or the charter power to enact ordinances not inconsistent with the general law. *State v Harris*, 50 M 128, 52 NW 387.

On Nov. 14, 1893, the county board granted and tendered applicant a license, purporting to be for a year from July 1, 1893, which he declined to accept, and demanded a license in accordance with his application, or a return of his money, which the board refused. The board had no authority to issue, and applicant was not bound to accept, such a license, and he can maintain an action to recover his money. *Zeglin v County Board*, 72 M 17, 74 NW 901.

The question whether a license for the sale of intoxicating liquors shall be granted to an applicant therefor within the city of Northfield rests in the sound judgment and discretion of the council, in the exercise of which they act judicially, and not ministerially, and their action cannot be controlled or reviewed by mandamus. *State ex rel v City of Northfield*, 94 M 81, 101 NW 1063.

Revised Laws 1905, Section 1519, declaring the sale of intoxicating liquor without a license a misdemeanor, is not void because no maximum penalty is there prescribed for its violation. *State v Kight*, 106 M 371, 119 NW 56.

No search warrants may be issued. OAG Feb. 8, 1934.

The state law does not provide for search and seizure of intoxicating liquors, and it would be necessary for village ordinance to provide therefor. OAG Dec. 27, 1935 (218f-3).

Licenses cannot be issued for a period longer than one year. OAG July 29, 1938 (218g).

Borrowing between "off-sale" dealers is illegal. OAG Oct. 25, 1935 (218j).

Where owner of drug store holding an "off sale" intoxicating liquor license transfers drug store to his son and retains the liquor business for himself, and the drug store is separated from the liquor department by a solid partition with separate entrances, license held by father could be transferred to himself as owner of an exclusive liquor store, and there would be nothing to prevent the sale of non-intoxicating malt liquors by the son in the drug store upon obtaining proper license. OAG Feb. 8, 1938 (218g-13).

Warehouse receipts issued for whiskey stored in a bonded warehouse outside the state sold or otherwise disposed of in the state are subject to the provisions of the liquor control act. OAG Sept. 21, 1934 (218j-18).

It is permissible for anyone to transport intoxicating liquors into a dry city for personal use. OAG Feb. 26, 1934.

A customer may bring his own liquor and drink it without making the owner of an unlicensed restaurant liable. OAG Feb. 26, 1934.

A record aye and nay vote of the members of the council is not required. 1942 OAG 164, June 24, 1941 (218G-6).

Except for the purpose of having all licenses expire at the same time, no license should be granted for less than one year. 1942 OAG 165, April 24, 1941 (218-g).

With the consent of the surety and of the liquor commissioner a license may be transferred from one location to another. OAG May 19, 1944 (90e-4).

A club license permits sale to bona fide members only. OAG Feb. 1, 1945 (218g).

2. When required

Evidence held to sustain a finding of a violation of an ordinance prohibiting the keeping of intoxicating liquor for sale without a license. *State v Kaasa*, 198 M 181, 269 NW 365.

Sale without a license. *State v Mueller*, 218 M 451, 16 NW(2d) 777.

The city of Duluth under its charter may enact legislation regulating the sale of intoxicating liquor, and to provide for forfeiture of liquor found in illegal possession. *Duluth v Cerveny*, 218 M 512, 16 NW(2d) 779.

A municipality is not required to obtain a license or bond. OAG Jan. 20, 1934; OAG Jan. 22, 1934.

Intoxicating liquors may not be sold without a license on a barge anchored in a river or lake or in international waters. OAG Sept. 6, 1938 (218j).

A purchaser at a sheriff's sale cannot resell without a license. OAG April 29, 1935 (218g-16).

Intoxicating beverages imported into the state should not be released by the collector of customs unless the persons to whom released are licensed, including importations for private use. OAG Jan. 16, 1934.

It is lawful for a distiller located outside the state to ship intoxicating liquor in bond to a concentration bonded warehouse under the control of the United States without first having obtained a license. OAG Nov. 9, 1934 (218d).

Members of a club may keep liquors in their lockers without obtaining any license, if the liquor is not for sale. OAG April 18, 1936 (218g-15).

3. Power of municipalities to license

The legislature has the right to confer upon a city the power of regulating any business which may act prejudicially upon the health, morals, or peace of the inhabitants. *City of St. Paul v Troyer*, 3 M 291 (200).

It is competent for the legislature, in the absence of constitutional restraint, to invest the town supervisors, though the town be a quasi corporation only, with full and exclusive power and authority to grant licenses, and to regulate all persons vending or dealing in intoxicating liquors. *State v Dwyer*, 21 M 512.

The legislature may authorize a municipal government to impose new and additional penalties for acts already penal by the laws of the state. *State v Ludwig*, 21 M 202.

As respects the city of Rushford, the right to issue licenses to sell intoxicating liquors is in the city council exclusively. *State v Pfeifer*, 26 M 175, 2 NW 474.

The Minneapolis city council has the power to prohibit and punish the sale of malt liquor without a license. *State v Gill*, 89 M 502, 95 NW 449.

The charter provisions of the city of Minneapolis authorizing its city council to license and regulate the sale of intoxicating liquors within its limits and the ordinance enacted pursuant to such authority was not repealed by Laws 1887, Chapter 6, regulating the sale of intoxicating liquors. *State v Lindquist*, 77 M 540, 80 NW 701.

The city council of Minneapolis has power to make reasonable regulations as to where, or within what parts of the city, the business of selling intoxicating liquors may be carried on. This is a legislative power, which they must exercise themselves by ordinance passed in the manner prescribed by the city charter. The council cannot delegate this power to the mayor. *In re Wilson*, 32 M 145, 19 NW 723. See also *State v Kantler*, 33 M 69, 21 NW 856.

The charter of the village of Winnebago City exempts the village from the operation of the general law of the state regulating the sale of intoxicating liquors, and places the whole matter under the exclusive control of the council of the village. No indictment under the general law will lie for selling such liquors within the village. *State v Wheeler*, 27 M 76.

By the charter of the village of Windom (Special Laws 1875, Chapter 24), it was not intended to abrogate, as respects that locality, the general law of the state prohibiting the selling of intoxicating liquor without a license, although the village council alone was authorized to grant licenses, and was invested with authority to restrain, regulate, and control, "to the entire exclusion of any control or right to regulate or restrain, in said matters, by any board, officer, person, or municipality of this county." *State v Nolan*, 37 M 16, 33 NW 36.

A provision in a city ordinance that no person shall be permitted to sell any spiritous or intoxicating liquor within the city without first having obtained a license applies to druggists. *City of Rochester v Upham*, 19 M 108 (78).

The provisions of Laws 1887, Chapters 5, 6, 81, in relation to the sale of intoxicating liquors, are made specially applicable to cities, and supersede all inconsistent charter provisions as to the terms and conditions upon which licenses may be issued. *State v Peterson*, 38 M 143, 36 NW 443.

The general law making the sale of intoxicating liquors by persons not licensed a criminal offense remained in force within the village of Worthington notwithstanding the provisions of the special act of incorporation; but, by the force of the special act, the sale of such liquors as a beverage was prohibited, and a penalty prescribed therefor. Upon an indictment under the general law for selling without a license, it appeared that the sale for which defendant was indicted was made as a beverage. This did not render the general law applicable to the case. *State v Langdon*, 31 M 316, 17 NW 859.

The general statutes of the state regulating the sale of intoxicating liquors operate and have force uniformly throughout the state, anything contained in municipal charters or ordinances to the contrary notwithstanding. *State ex rel v Robinson*, 101 M 277, 112 NW 269.

Revised Laws 1905, Sections 1519 to 1566, provide a general system for the regulation of the business of selling intoxicating liquors, which is operative throughout the state and impose a standard of regulation below which no municipality may fall. It does not deprive municipalities of their existing charter powers to provide for such supplementary and additional regulations as are required by local conditions. *Evans v City of Redwood Falls*, 103 M 314, 115 NW 200.

Laws 1921, Chapter 338, (General Statutes 1923, Section 3235) authorizes municipal ordinances prohibiting the disposition by sale or other enumerated methods of intoxicating liquor. The effect is to authorize appropriate legislation in force when the act was passed as well as that subsequently enacted. *State ex rel v Anderson*, 165 M 150, 206 NW 51.

Revised Laws 1905, Section 1528, granting the right of local option to towns and incorporated villages, does not apply to the cities of the state. *Kleppe v Gard*, 109 M 251, 123 NW 665.

A municipal ordinance providing that one who applies for a liquor license must make an affidavit designating the place where the business is to be conducted, that he will carry it on personally, and that the rooms in which it is to be conducted are not adjacent to any building wherein theatrical or variety entertainments are conducted, is a reasonable exercise of the power conferred upon the municipality by its charter. The general laws of the state (Laws 1887, Chapters 5, 6, 81) regulating the liquor traffic are not inconsistent with such city ordinance. *State v Scatena*, 84 M 281, 87 NW 764.

A municipality is not liable in tort for a mistaken action of the city council in attempting to revoke a license to sell intoxicating liquors. *Claussen v City of Luverne*, 103 M 491, 115 NW 643.

Acts which are punishable under the general laws of the state may also be punished by municipal ordinance, and the latter is valid though the punishment prescribed in each be not the same. *State v Nicolin*, 84 M 367, 87 NW 916.

The liquor control commissioner may exercise his discretion in approving or refusing to approve an "off sale" liquor license granted by the governing body of a municipality. *State v Arundel*, 200 M 305, 273 NW 817.

A valid search and seizure having been made under state law and the municipal court of Duluth having obtained possession of the liquor seized, the city had authority to prosecute under the ordinance rather than under state law, and conviction under the ordinance was a valid basis for an order of forfeiture thereunder. *Duluth v Cerveny*, 218 M 511, 16 NW(2d) 779.

Under the charter provision in the instant case any improper or wrongful behavior of substantial character and of public concern in relation to operation of licensed business is ground for revocation of license; and the general power of a city council to revoke liquor license under quoted provision of the charter cannot be restricted by ordinance limiting the power to revoke to violations of liquor ordinance and state liquor control act. *Moskovitz v City of St. Paul*, 218 M 543, 16 NW(2d) 745.

Municipalities cannot engage in the sale of intoxicating liquors where licenses could not be issued to others. OAG Jan. 22, 1934.

A municipality may own a liquor store but not a non-intoxicating beer parlor. OAG Feb. 1, 1935 (218g-11).

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Town boards have nothing to do with the granting of liquor licenses. OAG Jan. 23, 1934.

An unincorporated hamlet or borough cannot issue licenses. OAG April 16, 1935 (218g-13).

A city may prohibit the consumption of intoxicating liquor in any public place. OAG Jan. 17, 1934.

The city council must issue licenses, and cannot delegate this duty to an executive commission of the city. OAG Jan. 29, 1934.

A city of the fourth class may establish as many municipally owned liquor stores as it sees fit. OAG Feb. 15, 1934.

A village may by ordinance authorize the issuance of search warrants for violation of intoxicating liquor ordinances, not in connection with violation of the state laws. OAG April 27, 1936 (218f-3).

A village may enact an ordinance prohibiting sale to habitual drunkards. OAG May 4, 1937 (218i-3).

A village may pass an ordinance and grant licenses, and then repeal the ordinance and provide for a municipal liquor store, but such repeal cannot be effective until the expiration of licenses in existence. OAG Oct. 20, 1937 (218g-6).

A village in a county voting wet on the repeal of the 18th Amendment may issue licenses where no local option election has ever been held. OAG Oct. 28, 1937 (218g-11).

If a village is wet, council must either establish a municipal liquor store or grant private licenses, but if village is dry, council can neither grant private licenses nor establish a municipal liquor store. OAG May 5, 1937 (218g).

Village council may establish a commission to manage the village liquor store. OAG Jan. 20, 1934.

The council of a village has the right to appoint a manager for the village liquor store and to remove him at will. OAG April 19, 1934 (218j-10).

The ownership of a municipal liquor store must be vested in village and must be conducted as other village business, and it would be illegal to permit a private party to establish a municipal liquor store at his own expense and give half of the profits to the village. OAG March 18, 1938 (218g-13).

A village establishing a municipal liquor store cannot rent a part of a hotel and contract with a certain person to run the store, pay all help, and purchase all liquors, for a lump sum per month, and give such person 50 per cent of the profits as his compensation, since the employees in the store would be village employees that must be paid as such and all expenses must be presented in the regular way by verified claims to the village council, etc. OAG Jan. 25, 1935 (218g-13).

An agreement whereby a village supplied the stock of merchandise for an exclusive liquor store and the person with whom the agreement was made supplied the equipment, each party standing half of the expense and sharing equally in the profits, was invalid and the village may terminate the relationship without paying the former operator for good-will or other non-tangible assets. OAG May 4, 1938 (218j-10).

A municipal liquor store cannot be taxed. OAG May 14, 1938 (218k).

A municipal liquor store must have a refreshment license. OAG May 21, 1934 (238g).

A municipal liquor store cannot sell to a private licensee. OAG June 1, 1937 (218j-10).

An ordinance prohibiting granting of an "on-sale" to a place where women are employed is valid. 1942 OAG 233, Dec. 16, 1941 (498-A).

Where a municipality purchases liquor the contract should provide a discontinuance of the contract without damage if the municipal store discontinues; and should provide for payment of all purchase bills by filing and audit and payment in a manner similar to all other bills incurred by the village. OAG March 1, 1944 (218r); OAG March 4, 1944 (218r).

A municipality may use the profits of its off-sale municipal liquor store to purchase equipment for on-sale store. OAG Jan. 12, 1945 (218r).

4. For sale of 3.2 per cent beer

3.2 per cent beer may not be sold under an intoxicating liquor license. OAG June 18, 1934 (217a).

If licensee is engaged in any business entitled to be licensed, except the exclusive liquor store business, there is no prohibition against his selling 3.2 per cent beer in connection with intoxicating liquors. OAG Jan. 15, 1934.

An exclusive liquor store may sell non-intoxicating malt liquors at "off sale", under Laws 1937, Chapter 421, but not at "on sale", providing that an "off sale" license is obtained. OAG May 27, 1937 (218j-10).

Village council was arbitrary in denying a non-intoxicating malt liquor license to the operator of a hotel because he also held a liquor license for the same place. OAG Aug. 4, 1939 (218g-5).

5. To whom issued

Under General Statutes 1866, Chapter 16, it is the duty of the county board to exercise discretion and discrimination in granting licenses to sell intoxicating liquors, and in each case to determine the fitness of the person applying for a license, the sum to be paid for licenses, and the sufficiency of the applicant's bond. The county board cannot delegate to any person any of these duties or powers; and license granted upon such delegation is void. *County of Hennepin v Robinson*, 16 M 381 (340).

The granting or refusing a license to sell intoxicating liquors is vested in the discretion of the county board, and the exercise of its discretion cannot be controlled or reviewed by mandamus. *State ex rel v County Board*, 60 M 510, 62 NW 1135.

A club located outside the corporate limits of a city, village, or borough may not obtain a license from the county board or a municipality. OAG June 15, 1939 (218g-15).

A subordinate lodge in existence less than 20 years is not entitled to a license although the parent lodge has been in existence more than 20 years. OAG May 25, 1939 (218g-15).

Provision in Laws 1939, Chapter 154, relating to bona fide clubs in existence for 20 years which are duly incorporated, requires that such clubs be in existence locally for 20 years, but they need not have been incorporated for that length of time, and as respects lodges it is not sufficient that the parent lodge has been in existence for 20 years. OAG June 20, 1939 (218g-15).

City of the third class can issue "on sale" licenses only to hotels, clubs, and restaurants. OAG Jan. 15, 1934.

In third class cities "on sale" liquor licenses can only be issued to persons operating hotels, clubs, and restaurants. OAG April 29, 1936 (218g-13).

Restaurants and confectioneries cannot be licensed in fourth class cities. OAG Jan. 26, 1934.

"Off sale" licenses may be granted drug stores in addition to exclusive liquor licenses in cities of the fourth class unless the city operates an exclusively owned liquor store. OAG Feb. 15, 1934.

A city of the fourth class with a population between 5,000 and 10,000 may limit "on sale" licenses to hotels or clubs or to exclusive liquor stores or to any two of the three types but cannot give a retailer wholesale privileges. OAG Jan. 29, 1934.

City council may transfer an "off sale" liquor license to a person qualified to accept it. OAG May 23, 1939 (218g-10).

A village of 1,000 can grant "on sale" licenses only to hotels, clubs, or exclusive liquor stores, and cannot grant a license to a restaurant. OAG Jan. 20, 1934.

On death of licensee, license automatically expires and no right passes to the personal representative. OAG Oct. 1, 1936 (218g-6).

A license may be granted to the wife of a member of the council if it is certain that he has no interest therein. OAG May 19, 1944 (903-4).

Where a city of the fourth class operates a municipal on-sale liquor store, a club license may be granted to a club in existence 20 years. OAG Aug. 4, 1944 (218g-15).

The council may refuse to renew the license of a present licensee, and grant a license to a new licensee. OAG Oct. 6, 1944 (218g-6).

6. Limitation of number

The council may, if in its judgment the best interests of the inhabitants of the city demand it, limit the number of saloon licenses to be granted. State ex rel v City of Northfield, 94 M 81, 101 NW 1063.

Certified copies of the last federal census control for the purpose of determining the number of liquor stores. OAG May 17, 1939 (218g-13).

The population of a village for license purposes is that of the last state or federal census. OAG June 7, 1937 (218g-11).

The council may limit the number of "on sale" and "off sale" licenses, and may limit them to one. OAG Jan. 11, 1934.

All licenses must be counted, whether issued to clubs, hotels, restaurants, or exclusive liquor stores, in determining the limit of five "on sale" licenses. OAG Jan. 22, 1934.

A city of the fourth class with a population of approximately 1,300 may only issue five "on sale" licenses and as many "off sale" licenses as it deems advisable. OAG Feb. 27, 1934.

Where a village of less than 1,000 inhabitants has issued a license to an exclusive liquor store it cannot issue another "off sale" license to a local drug store. OAG March 3, 1934.

A village council having the right to issue one liquor license cannot approve two or more and let the commissioner select one and reject the other. OAG March 19, 1934.

We assume the council has good reasons to limit the number of licenses to two, but in case of appeal the council must be able to show what the reasons are, and that they are reasonable. 1942 OAG 154, Aug. 15, 1941 (802B).

The fact that a village operates a municipal on-sale liquor store does not prevent the granting of a club license. OAG Oct. 18, 1944 (218g-15).

7. On sale and off sale

A city of the third class cannot grant an "off sale" and an "on sale" license to the same party. OAG April 29, 1936 (218g-13).

A city of the fourth class can issue an "on sale" license to the proprietor of an hotel for any compact and contiguous space of the hotel building and the license does not have to be limited to the dining room only, and one license may be issued to cover two dining rooms if they may as a fact be classified as one "compact and contiguous space". OAG Jan. 17, 1934.

It is permissible for a city of the fourth class to establish an exclusive liquor store for both "off sale" and "on sale" license, either to be operated by the city or by an individual. OAG Jan. 17, 1934.

An "off sale" license cannot be granted to a drug store in connection with a food store or a department store. OAG March 17, 1938 (218g-5).

An hotel proprietor holding an "on sale" license, may also hold an "off sale" license by virtue of being the owner of an exclusive liquor store, but the exclusive store cannot be operated in the hotel. OAG Aug. 23, 1937 (218g-1).

A liquor store may have both "on sale" and "off sale" licenses. OAG Jan. 22, 1934.

Only an exclusive liquor store may be granted both an "on sale" and an "off sale" license. OAG Feb. 3, 1934.

It is not permissible for a retail liquor store with an "off sale" license to employ a salesman to solicit orders for sale within the city or county; but a retail liquor store with an "off sale" license may deliver its wares. OAG Feb. 13, 1934.

Defining "off-sale" or "off the premises" licenses; limitation on granting them. 1942 OAG 166, Feb. 24, 1942 (218G-15).

8. Manufacturers and wholesalers

The laws of this state regulating the sale of intoxicating liquors (General Statutes, Chapter 16; Laws 1887, Chapters 5 to 8, 81) do not apply to exclusively wholesale dealers, who sell to other dealers, so as to make it necessary for them to take out licenses. *State v Orth*, 38 M 150, 36 NW 103.

Under General Statutes 1878, Chapter 16, a manufacturer of intoxicating liquor in this state cannot sell his liquor in a less quantity than five gallons, without obtaining a license from the authorities of the place where the sale is made. *State v Schroeder*, 43 M 231, 45 NW 149; *State v Schroeder*, 45 M 44, 47 NW 308.

The provision of the statute in force prior to 1887, with respect to the sale of intoxicating liquor, prohibiting sales in less quantities than five gallons without a license, was not repealed by the legislation of 1887. The statute still makes such sales illegal, even though the liquor be sold in a corked bottle, and not to be drunk on the premises. A wholesale liquor dealer is not exempt from this law. *State v Benz*, 41 M 30, 42 NW 547; *State v Brackett*, 41 M 33, 42 NW 548.

An ordinance of the city of St. Paul regulating the sale of intoxicating liquors, there being no provision therein for licensing manufacturers, held not to apply to such. *City of St. Paul v Troyer*, 3 M 291 (200).

Laws 1895, Chapter 8, Section 135, giving to city councils the power to license and regulate the sale of intoxicating liquors, construed, with reference to the whole legislation of the state dealing with the subject of licensing the sale of intoxicating liquors and the uniform practical constriction thereof, held, that it does not apply to exclusively wholesale dealers selling in quantities of five gallons or more. *State ex rel v Sullivan*, 117 M 329, 135 NW 748.

A brewer under the \$500.00 license may sell to wholesaler and retailer, but not to the consumer, without the necessity of taking out a wholesaler's license. OAG Jan. 18, 1934.

Minnesota wholesalers and manufacturers who have taken out Wisconsin wholesaler's licenses and have received stamped liquor which has arrived in this state through regular channel of manifest and has been duly stamped and then stored in Superior cannot ship from the storehouse in Superior to "off sale" and "on sale" places in this state. OAG Dec. 13, 1934 (218j-16).

A village cannot impose additional license fees on wholesalers and manufacturers, though the ordinance is based on the public health provisions of the law, to afford the village an opportunity of having a chemical analysis of beer or liquor. OAG June 8, 1937 (218g-12).

A wholesaler's license does not include the right to rectify and blend whiskey, but a manufacturer's license includes wholesaling privileges. OAG Feb. 6, 1934.

A truck driver who purchases six per cent beer and re-sells to retailers must have a wholesaler's license. OAG Feb. 26, 1934.

If a wholesaler sells both wines and beers, wines containing not more than 25 per cent alcohol and beer containing not more than 3.2 per cent alcohol, he must take out two licenses. OAG Jan. 18, 1934.

Where application was made for a renewal of license on August 4, but licensor was unable to obtain bond and pay \$2,500 license fee until October 25, 1937, and during the interval there was no manufacture or sale of intoxicating liquor, the new license should have been dated as of October 25, and not as of August 4. OAG Oct. 29, 1937 (218g).

9. Exclusive liquor stores

It is not necessary to submit the proposition of establishing a municipal liquor store to the electors. OAG Dec. 29, 1936 (218j-10).

Only intoxicating liquors may be sold in an exclusive liquor store. OAG Jan. 20, 1934.

The law requires exclusive liquor stores to be completely set apart from any other business and in a separate store or room. OAG April 29, 1936 (218g-13).

Exclusive liquor stores must be entirely separated from any other line of business and if the same party is to operate an exclusive liquor store with another business he must have a partition and a separate outside entrance. OAG May 23, 1939 (218g-10).

The owner of a pool and billiard parlor may obtain an "off sale" liquor license if he completely separates the two businesses, by a separate room and a separate entrance and no connection between the two, and operates them entirely separately. OAG Sept. 11, 1939 (218g-1).

A city may issue an "on sale" license to an exclusive liquor store and limit sales of hard liquors exclusively and thus permit restaurants and other establishments to sell 3.2 per cent beer. OAG Feb. 13, 1934.

If a municipality with a population of over 5,000 and less than 10,000 decides to license restaurants, it cannot also permit the establishment of exclusive liquor stores. OAG Jan. 20, 1934.

If exclusive liquor store is owned by a city of the fourth class, no licenses, either "on sale" or "off sale", may be issued to private persons, but if an exclusive liquor store license is granted to a private party, the law does not prohibit the issuance of other licenses to authorized businesses. OAG Jan. 29, 1934.

Councilmen holding a liquor license are ineligible to vote on establishment of a municipal liquor store. 1942 OAG 162, March 6, 1942 (218G-13).

Municipal liquor store cannot be established in a newly incorporated village. See Laws 1941, Chapter 34. 1942 OAG 163, April 23, 1941 (218G-13).

An ordinance prohibiting sale elsewhere than in municipal dispensary should be amended when a club license is issued. OAG Oct. 23, 1944 (218i-3).

10. Hotels and restaurants

Hotels are not considered as preferred over an exclusive liquor store or a restaurant. OAG Feb. 14, 1934.

An "on sale" or an "off sale" liquor license may not be granted to a person who has a place of business in a hotel who is not the proprietor thereof, unless his business is separate entirely from the hotel proper and is not a part thereof. OAG April 29, 1936 (218g-13).

In cities of the fourth class "off sale" licenses cannot be granted to restaurants. OAG Aug. 4, 1937 (218g-5).

11. Fees

Laws 1887, Chapter 5, Section 2 (General Statutes 1894, Section 2023) forbids the granting of licenses for the sale of intoxicating liquors for a less sum than \$500.00, and authorizes the council of any city of the class designated to exact a license fee in excess of such sum. *Kelly v City of Faribault*, 83 M 9, 85 NW 720.

A city council has authority, by general ordinance or resolution, to fix the license fee for the sale of intoxicating liquors, subject to the provisions of Revised Laws 1905, Section 1527, but cannot arbitrarily discriminate against an applicant, by exacting a greater than the established fee. *Gillen v City of South St. Paul*, 111 M 172, 126 NW 624.

The amount of license fee for an "on sale" license to an exclusive liquor store in a village of 3,500 inhabitants must be determined by village council, the only limit being that the fee must not be exorbitant. OAG Jan. 26, 1934.

The maximum fee for an "off sale" license in a village of 250 is \$100.00. OAG March 11, 1936 (218g-11).

A license fee of \$100.00 is the maximum fee that can be charged a club. OAG May 25, 1939 (218g-15).

Before license fees can be raised above the amount specified in an ordinance, the village must amend the ordinance. OAG May 24, 1937 (187a-2).

A city may charge different license fee to dealers in beer and wines than for dealers in hard liquors. OAG Jan. 29, 1934; OAG Feb. 13, 1934.

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A city council cannot grant a refund of a license fee where the license holder disposes of the business and the city council grants a new license to another applicant who pays pro rata. OAG Nov. 19, 1938 (218g).

The license fee paid by a person obtaining a license for a vacant lot may not be refunded because the licensee intended to build a liquor store but failed to do so. OAG April 25, 1939 (218g-6).

340.111 HOTEL "ON SALE" LICENSES.

HISTORY. 1943 c. 429 s. 1.

340.112 REFUNDMENT OF LICENSE FEE IN CASE OF DEATH OR CALAMITY.

HISTORY. 1945 c. 226 s. 1.

340.113 IMPORTATION LICENSE.

HISTORY. 1943 c. 307.

340.12 APPLICATION FOR LICENSE.

HISTORY. 1851 c. 7 ss. 2, 4; R.S. 1851 c. 20 ss. 2, 4; 1852 c. 8 s. 3; 1855 c. 48 ss. 1, 2; 1858 c. 74 s. 2; P.S. 1858 c. 18 s. 16; 1862 c. 57 s. 1; G.S. 1866 c. 16 ss. 2, 3; 1872 c. 61 ss. 1, 2; G.S. 1878 c. 16 ss. 2, 3; 1887 c. 6 s. 1; 1887 c. 81 ss. 1, 2, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 ss. 21, 34; 1893 c. 167 s. 1; 1893 c. 179 s. 1; G.S. 1894 ss. 1991, 1992, 2021, 2026; 1905 c. 246 s. 1; R.L. 1905 ss. 1523, 1524, 1540; 1907 c. 380 s. 1; 1909 c. 283 s. 1; G.S. 1913 ss. 3115 to 3117, 3155; Ex. 1934 c. 46 s. 6; M. Supp. s. 3200-26; 1943 c. 501 s. 2; 1943 c. 568 s. 1; 1945 c. 313 s. 1.

Under General Statutes 1878, Chapter 16, it is the duty of the county board to exercise discretion and discrimination in granting licenses to sell intoxicating liquors, and in each case to determine the fitness of the person applying for a license, the sum to be paid for licenses, and the sufficiency of the applicant's bond. The board cannot delegate to any person any of these duties or powers. Any license granted upon such delegation is void, and the license fee for the same cannot be recovered by the county. *County of Hennepin v Robinson*, 16 M 381 (340).

Bonds required and given to secure faithful compliance with the provisions of a law of the state, like official bonds, should be made to the state, in the absence of authority, express or clearly implied, to take the same to a municipal corporation, or some public officer, as obligee therein. *Village of St. James v Hingtgen*, 47 M 521, 50 NW 700.

Under Laws 1887, Chapter 6, the bonds required of applicants for license to sell intoxicating liquors should run to the state, and the penalties recovered in prosecutions thereon go to the county treasury. Such bonds may be prosecuted in the name of the state by the county attorney in his official capacity. *Village of St. James v Hingtgen*, 47 M 521, 50 NW 700.

Where the bond of a licensee under Laws 1887, Chapter 6, was erroneously to a village in its corporate name, the county attorney was not authorized of his own motion, and without the consent of the village, to prosecute the same in its corporate name. *Village of St. James v Hingtgen*, 47 M 521, 50 NW 700.

The bond to be executed by a person making an application for a license to sell intoxicating liquors, in accordance with General Statutes 1894, Section 2026, is one of indemnity, given to protect the state as well as such private parties as are authorized to maintain actions under the provisions of section 1992. The amount thereof is a penalty, and not in the nature of liquidated damages, to be recovered as an entire sum in case any of the conditions of the bond are violated. *State v Larson*, 83 M 124, 86 NW 3.

The city of Minneapolis has no authority, under General Statutes 1894, Section 2026, to take from an applicant for a liquor license a bond running to the city as obligee, but the bond provided for in that section must run to the state. The city took such a bond, running to itself, conditioned as provided in said section, and conditioned further that the principal obligor therein will "comply with all

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the provisions of the city ordinance relating to the licensing of the sale of intoxicating liquors". The license was issued. The licensee committed a breach of the ordinance, was convicted and fined therefor, and paid the fine. Thereupon this action was brought to recover the penalty of the bond. The city had no authority, under its charter, to take such a penal bond and the action cannot be maintained. *City of Minneapolis v Olson*, 76 M 1, 78 NW 877.

The filing of a sufficient bond is a necessary part of the application for a liquor license, and where such bond, after its approval and the granting of the application by the city council, has been withdrawn, the municipal officers have no authority to issue the license. *State ex rel v Schreiner*, 86 M 253, 90 NW 401.

Whether contributory negligence is a defense in an action based upon the violation of a statute or ordinance depends upon consideration of policy and legislative intent, and this applies to section 340.12 and the corresponding city ordinance, and damages are recoverable by a party injured by their violation irrespective of the contributory intoxication of the party. *Mayes v Byers*, 214 M 55, 7 NW(2d) 403.

The liability created under the liquor license statute has for its basis the enforcement of the statutory penalty imposed upon the liquor dealer, not damages in tort; but as a general rule an injured party who has accepted satisfaction, from whatever source it may come, cannot recover again for the same penalty. *Philips v Aretz*, 215 M 325, 10 NW(2d) 226.

Certificates of deposit and cashier's checks cannot be posted as collateral. OAG March 1, 1934.

A retail dealer under his bond guarantees payment of property taxes as well as liquor taxes, but the bond would not cover old taxes. OAG Feb. 15, 1934.

The license fee deposited with an application must be refunded where no license is granted because the applicant has filed no bonds. OAG April 3, 1935 (218g).

A municipality is not required to obtain bond. OAG Jan. 20, 1934.

A city establishing its own exclusive liquor store is not required to furnish a bond. OAG Jan. 22, 1934.

The amount of bond for an "on sale" license cannot be less than \$3,000. OAG Feb. 13, 1934.

A new bond must be given with each renewal of license. OAG June 29, 1934 (218L).

A municipality operating an exclusive liquor store is liable for injuries. OAG July 25, 1934 (218e).

The mere fact that one company writes more bonds than other companies does not prevent the commissioner from approving the bonds of that company. OAG Jan. 24, 1934.

The commissioner may approve bonds written by companies of which he had previously been an agent, he having entirely severed relations therewith. OAG Jan. 24, 1934.

An action to have bond declared forfeited is to be commenced by the service of summons and complaint as any other action. OAG Jan. 29, 1934.

The question whether or not a city or village council is to bring proceedings to recover on "off sale" bonds forfeited by the liquor control commissioner is within the discretion of the council. OAG Feb. 27, 1936 (218L).

Contributory negligence is no defense where statute expressly provides for liability for injuries resulting from its breach. 27 MLR 539.

340.13 REVOCATION OF LICENSES.

HISTORY. 1852 c. 8 s. 7; 1855 c. 48 s. 6; 1858 c. 74 s. 5; P.S. 1858 c. 18 s. 19; G.S. 1866 c. 16 ss. 3, 12; 1872 c. 61 s. 2; G.S. 1878 c. 16 ss. 3, 12; 1887 c. 5 s. 3; 1887 c. 81 ss. 3, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 ss. 28, 32; 1893 c. 189 s. 1; G.S. 1894 ss. 1992, 2001, 2020, 2024; 1897 c. 154 s. 1; 1903 c. 265 s. 1; R.L. 1905 ss. 1536 to 1538, 1540; 1909 c. 283 s. 3; 1913 c. 109 s. 1; G.S. 1913 ss. 3149 to 3152, 3154, 3155; Ex. 1934 c. 46 s. 7; 1935 c. 306 s. 1; M. Supp. s. 3200-27; 1943 c. 501 s. 3.

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In proceedings for revoking the relator's license, held that the city council did not err in refusing to postpone the examination in the absence of his attorney, and that he was not deprived of reasonable opportunity to be heard. *State ex rel v City of Northfield*, 41 M 211, 42 NW 1058.

A license may be revoked without judicial proceedings. *State v Harris*, 50 M 128, 52 NW 387; *State v Larson*, 83 M 124, 128, 86 NW 3.

Under an act authorizing local option a vote against granting licenses may operate to revoke all outstanding licenses. *State v Cooke*, 24 M 247.

A provision that no license shall be granted for a less term than one year held not to withhold power to revoke a license before the expiration of the year for which it was granted. *State v Dwyer*, 21 M 512.

In proceedings for the revocation of a license under General Statutes 1878, Chapter 16, Section 28, a refusal of the council to postpone the hearing held not improper. *State ex rel v City of Northfield*, 41 M 211, 42 NW 1058.

The revocation of a license upon conviction is not a punishment within the meaning of the constitution limiting the jurisdiction of justices of the peace. *State v Harris*, 50 M 128, 52 NW 387; *State v O'Connor*, 58 M 193, 59 NW 999.

The provision for refundment held to vest in the municipal officers discretionary authority only, and is not mandatory. *Bender v City of Fergus Falls*, 115 M 66, 131 NW 849.

A municipality is not liable in tort for the mistaken action of the council in attempting to revoke a license. *Claussen v City of Luverne*, 103 M 491, 115 NW 643.

Laws 1907, Chapter 15, validating refundments of fees in cities of the first class, held not unconstitutional. *Calderwood v Jos. Schlitz Brewing Co.* 107 M 465, 121 NW 221.

The general power of a city council to revoke a liquor license, given to the council by the charter, cannot be restricted by an ordinance limiting the power to revoke to violations of ordinances or statutes. *Moskovitz v City of St. Paul*, 218 M 544, 16 NW(2d) 745.

Person or board revoking a license is not liable for any damages suffered by licensee unless the power was exercised in an arbitrary manner without basis in fact or evidence. OAG Aug. 29, 1934 (218g-14).

The giving of a note to a village did not constitute payment of licensee fees, and a license granted could be revoked at any time. OAG July 8, 1935 (218g-11).

The city council, and not the mayor, has the power of revocation of a license. OAG June 2, 1936 (218g-14).

Liquor control commissioner may reopen and reconsider an order revoking a license. OAG Aug. 10, 1936 (218h-3).

On the death of the licensee, his license automatically expires and no right passes to the personal representative. OAG Oct. 1, 1936 (218g-6).

At a hearing before the liquor control commissioner in connection with the revocation of a license witnesses are entitled to six cents per mile and \$1.00 per day. OAG June 5, 1937 (218h-7).

If a manufacturer has been convicted of a violation of the liquor act, the commissioner may revoke his license summarily, but in the absence of a conviction he is entitled to a hearing, and the power to revoke after a hearing carries with it the lesser power to suspend the license for a reasonable length of time. OAG Aug. 2, 1939 (218h-3).

The revocation of an "off sale" license by the liquor control commissioner for violation of law prohibits the issuance of an "on sale" license. OAG Feb. 17, 1936 (218g-14).

Manufacturers cannot furnish equipment to retail dealers by lease or otherwise. OAG Feb. 15, 1934.

It is not lawful for a brewer to lease beer dispensing equipment to an "on" saler, but it is lawful to sell such equipment and fixtures on a time paying contract in good faith. OAG March 23, 1934.

The fact that village and county voted in favor of county option prior to national prohibition has no bearing on the question as to whether or not village

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has right to issue a license for the sale of intoxicating liquors. OAG April 10, 1934 (218g).

This section refers in no manner to a vote taken at the Sept. 12, 1933, election upon the question of the repeal of the 18th Amendment. OAG Jan. 20, 1934.

The fact that a county voted dry under the county option law of 1915 does not govern with respect to the power of municipality to issue license. OAG Jan. 20, 1934.

County option vote under 1915 law is not to be considered in determining whether or not a municipality can grant licenses. OAG Feb. 8, 1934; OAG Feb. 19, 1934.

Where a county voting against repeal of the 18th Amendment votes wet at an election, villages voting dry in 1916 under prior laws and having no election since, may not issue licenses without holding another election. OAG Sept. 21, 1937 (218c-2).

The fact that the county option laws are of no effect does not prevent the enforcement of the act in counties voting against licenses under repealed acts. OAG Jan. 24, 1934.

No licenses may be granted by a municipality which voted dry before prohibition. OAG Jan. 20, 1934.

Villages, cities, and towns have no right to prohibit the sale of liquor under the old local option liquor law. OAG May 28, 1934 (218j).

An ordinance passed by a city in 1921 prohibiting the sale of liquor is not now in force and effect, and this is true as to search and seizure and abatement provisions. OAG June 12, 1934 (259c-1).

There can be no municipal liquor store in a city voting dry at last local option election until the voters authorize the issuance of licenses. OAG April 4, 1936 (218g-13).

A local option election was valid even though the clerk did not file certificate of result. OAG Feb. 7, 1934.

A local option election was valid even though the clerk did not file certificate controls the question whether municipality can license. OAG Feb. 9, 1934.

Local option vote in a town is not binding on a subsequently organized village. OAG March 19, 1934.

Local option vote was of no effect in Indian territory. OAG March 8, 1934.

A village which has voted against licensing at the last local option election under the act of 1913 may not issue licenses without a vote of the electors. OAG Jan. 18, 1934.

No licenses can be legally issued in a village dry at the time of prohibition. OAG Jan. 20, 1934.

Dry vote in the village of North Mankato was without effect upon the right of the city of North Mankato to issue liquor licenses. OAG March 19, 1934.

A village detached from Indian country may license the sale of liquor if in a wet county, regardless of any dry local option vote while the village was in Indian country. OAG Dec. 12, 1934 (218g-11).

A liquor license may be issued to a person who holds brewery stock. The section prohibits the issuance of license only to those convicted of crimes after its passage, though past crimes are pertinent to good moral character and repute. It is permissible to grant a license to one intending to use a building that was padlocked for violation of the 18th Amendment. OAG Feb. 3, 1934.

A license is not a contract, and an alderman of a city may receive a license to sell intoxicating liquors, except that he cannot vote on his own application. OAG Feb. 15, 1935 (218g).

A non-citizen may not be issued a license. OAG March 3, 1934.

One convicted of a violation of a city ordinance relative to the sale of liquor is not entitled to a license. OAG June 13, 1938 (218i-2).

An "off sale" license cannot be issued for a drug store operating for less than two years, though a drug store had been operated in the location for many years by a different person. OAG May 6, 1935 (218g-5).

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A drug store location may be moved and still retain license. OAG April 7, 1938 (218j-3).

Liquor cannot be stored in a dry county awaiting shipment to wet territory. OAG Dec. 17, 1936 (218o).

A liquor store may have both "on sale" and "off sale" licenses. OAG Jan. 22, 1934.

The grant of a license to a private liquor store does not prevent the issuance of licenses to other businesses. OAG Jan. 29, 1934.

This section prohibits the issuance of either an "on sale" or an "off sale" license in municipalities maintaining a municipal exclusive liquor store. OAG Jan. 18, 1934.

A village of less than 500 inhabitants, which operates a municipal liquor store, may not legally issue any "on sale" liquor licenses to private individuals. OAG May 20, 1939 (218g-13).

An exclusive liquor store is authorized to sell non-intoxicating malt liquor at "off sale", but not at "on sale", but it must obtain a malt liquor license. OAG May 27, 1937 (218j-10).

A partnership may hold "on sale" and "off sale" beer licenses, to be used in connection with one business and in one building, and also an "off sale" intoxicating liquor license to be used in a separate business in a different building. OAG May 12, 1937 (217b-7).

City council may grant an "on sale" license to one holding a non-intoxicating malt beverage license, the latter license to be surrendered before the sale of intoxicating beverages. OAG March 19, 1934.

An intoxicating liquor license and a non-intoxicating beer license may be issued to the same person operating two places of business in the same building, providing that there is no direct communication between them. OAG March 19, 1934.

If a hotel dining room, restaurant, and tap room occupy a compact and contiguous space a license may be granted to cover the sale of liquor in all three eating places. OAG Jan. 13, 1934.

A hotel proprietor holding an "on sale" license, may also hold an "off sale" license by virtue of being the owner of an exclusive liquor store, but the exclusive store cannot be operated in the hotel. OAG Aug. 23, 1937 (218g-1).

Where a hotel has an "on sale" intoxicating liquor license, it cannot rent store space in the hotel building to an exclusive liquor store licensee, the rent to the hotel to be a percentage of the gross income from sales. OAG March 24, 1938 (218g-5).

Sales may be made in any part of a hotel licensed for that purpose, subject to the restriction that they be made in full view of the public. OAG Jan. 18, 1934.

Liquor sold by hotels may not be delivered to rooms. OAG Jan. 18, 1934.

A private room in a hotel cannot be classed as an "additional dining room open to the public where meals are regularly served". OAG Jan. 29, 1934.

Only one license was necessary for two dining rooms on different floors but both being on street levels, the two floors being readily accessible to each other and the customers being served from the same kitchen. OAG May 29, 1935 (218g-6).

A wholesaler's license is in a different class from a retailer's license and the holder of a retailer's license cannot obtain a wholesaler's license. OAG Jan. 29, 1934.

Wholesalers' licenses cannot be issued for premises outside patrol limits in Minneapolis. OAG Feb. 20, 1934.

Restrictions against screens, chairs, or tables in place where liquor is sold are reasonable. OAG June 5, 1934 (218i).

Bonds accepted as legal securities in connection with granting of off-sale liquor license cannot be released until expiration of the license period. 1942 OAG 161, June 19, 1941 (218L).

Where employee sells intoxicating liquor to a minor such wilful violation of the statute is grounds for revocation of license. Procedure outlined. OAG Sept. 23, 1944 (218j-14).

340.14 REGULATIONS.

HISTORY. 1849 c. 8 s. 2; 1851 c. 7 s. 5; R.S. 1851 c. 20 s. 5; P.S. 1858 c. 18 s. 19; 1866 c. 40 s. 1; G.S. 1866 c. 16 ss. 1, 10; 1872 c. 61 s. 2; 1875 c. 112 s. 1; 1877 c. 44 s. 1; 1878 c. 75 s. 1; G.S. 1878 c. 16 ss. 1, 10, 17, 19; 1887 c. 81 ss. 1, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 s. 29; 1889 c. 21 s. 1; 1889 c. 87 s. 1; 1893 c. 167 s. 1; G.S. 1894 ss. 1990, 1999, 2006, 2008, 2012, 2021; 1895 c. 90 s. 1; 1895 c. 191 s. 1; 1903 c. 240 s. 1; R.L. 1905 ss. 1532, 1533; G.S. 1913 ss. 3141, 3142; Ex. 1934 c. 46 s. 8; 1939 c. 101 s. 2; 1939 c. 429 s. 1; M. Supp. s. 3200-28; 1941 c. 415; 1941 c. 503; 1945 c. 326 s. 1.

1. Hours of sale
2. Persons to whom sale prohibited
3. Places where not to be sold

1. Hours of sale

An ordinance requiring saloons to be closed on Sunday is not unreasonable. *State v Harris*, 50 M 128, 52 NW 387, 531.

A complaint for not closing a saloon on Sunday held insufficient because not stating that the defendant owned or controlled the saloon or the opening or closing of it. *State v Gluck*, 41 M 553, 43 NW 483.

The hours of compulsory closing are to be determined by standard time. *State v Johnson*, 74 M 381, 77 NW 293.

Under General Statutes 1894, Section 2012, hotels are excepted from the provisions requiring places of business where intoxicating liquors are sold to be kept closed during certain hours, but not from the provision prohibiting the sale of liquors during those hours. *State v Eckert*, 74 M 385, 77 NW 294.

The fact that a license does not particularly describe the room in which the bar is to be kept is no defense. *State v Sodini*, 84 M 444, 87 NW 1130.

The revocation of a license for keeping a saloon open on Sunday does not bar a criminal prosecution. *State v Harris*, 50 M 128, 52 NW 387; *State v O'Connor*, 58 M 193, 59 NW 999.

The owner held prima facie liable for a saloon being kept open on Sunday whether present or not. *State v O'Connor*, 58 M 193, 59 NW 999.

An ordinance requiring saloons to be kept closed on Sunday was authorized by the charter. General Statutes 1894, Section 1999, requiring saloons to be kept closed on the Sabbath, did not revoke the authority to pass the ordinance, nor was the ordinance repugnant to the statute as imposing a different penalty. *State v Marciniak*, 97 M 355, 105 NW 965.

A sheriff's official duty implies alertness and initiative to enforce the laws enacted by the people for their protection and well-being. Relator, who failed to meet these requirements was properly removed from office. Removal of Mesenbrink, 211 M 114, 300 NW 398.

Where there have been continuous and persistent violations an injunction may be properly granted. *State v Sportmen's Club*, 214 M 155, 7 NW(2d) 495.

Village council may regulate hours so as to cut down the time further than that provided by this section. OAG Jan. 14, 1936 (218j-8).

When a town election in the town of Waterville is held within the limits of the city of Waterville, no intoxicating liquors may be sold on that day, notwithstanding that towns are separate governmental units and residents of cities do not participate in the election. OAG March 9, 1934.

Liquor stores in a village must be closed during a special election on the question of the construction of a municipal lighting plant. OAG Nov. 14, 1935 (218c-3).

A school election is not an election within the meaning of the statutes and ordinances respecting sales of liquor on election day. OAG May 22, 1937 (218c-1).

A club is subject to the provisions of the general laws relating to sale, including closing hours and gambling devices. OAG June 1, 1936 (218j-1); OAG Sept. 24, 1937 (218j-1).

The state law does not limit closing hours for places selling intoxicating liquors but merely limits the hours during which liquors may be sold, but it is within the power of a municipality granting licenses to enact an ordinance providing that the entire establishment must be closed at the closing hour provided for. OAG March 11, 1938 (218j).

Laws 1939, Chapter 429, Section 1, amending this section, does not alter or change any city ordinances, and municipalities may regulate by ordinance shorter hours. OAG May 12, 1939 (218e).

The holder of a liquor license, who also has a 3.2 beer license, may sell 3.2 beer on Sundays on the hours allowed by state law if he has totally removed all hard liquor from the premises. OAG Sept. 14, 1939 (218j-8).

Sale to a minor is a misdemeanor. 1942 OAG 171, Feb. 6, 1942 (218J-12).

An ordinance prohibiting the admission to or employment of women in taverns is a valid provision. 1942 OAG 233, Dec. 16, 1941 (498-A).

Even though the polls close at five o'clock, on village election day liquor may not be sold until 8:00 o'clock P. M. OAG Dec. 8, 1944. (218j-4).

2. Persons to whom sales prohibited

Licensee was liable for his servant's misconduct while in the discharge of duties within the scope of his employment. *State v Sobelman*, 199 M 232, 271 NW 484.

To sustain a prosecution for selling to a minor, it is unnecessary to prove that the sale was made with the knowledge or consent of the owner of the business. *State v Holm*, 201 M 53, 275 NW 401.

The provision that no intoxicating liquor shall be sold or furnished to any person under the age of 21 years applies to every place licensed to make either "off sale" or "on sale" or both. *State v Holm*, 201 M 53, 275 NW 401.

The seller must determine the age of the buyer at his peril. OAG April 27, 1936 (218j-12).

A village may enact an ordinance prohibiting sale to habitual drunkards. OAG May 4, 1937 (218i-3).

There is no statute authorizing the posting of the names of habitual drunkards with sellers of liquor. OAG May 25, 1937 (218e).

Minors under 18 years of age may not serve non-intoxicating liquors in a restaurant. OAG July 26, 1937 (217f-3).

The provision in this section against the employment of a minor relates only to places where intoxicating liquor is sold. OAG June 10, 1939 (218j-12).

A city ordinance incorporating the phraseology of this section was violated by a sale to a minor by an employee, the licensee not being present or approving, assenting to, or participating in the sale. OAG June 17, 1939 (218j-12).

A law requiring certain persons to prove their age before being served intoxicating liquor would be constitutional. OAG Feb. 14, 1945 (218j-12).

3. Places where not to be sold

The provision that all sales shall be made in full view of the public does not mean in full view of the public from outside the building but in full view of the public in the place of business. OAG Jan. 15, 1934.

Whether booths are sufficiently exposed to public view is a question of fact. OAG Jan. 11, 1934.

Sales of intoxicating liquors cannot be made in private rooms of a hotel. OAG Jan. 13, 1934.

A private room in a hotel cannot be classed as an "additional dining room open to the public where meals are regularly served." OAG Jan. 29, 1934.

Clubs possessing intoxicating liquor licenses are not exempt. OAG June 1, 1936 (218j-1).

Venetian blinds may be used on windows. OAG April 7, 1938 (218i-2).

A city ordinance requiring the windows of liquor stores to be opaque to a height of four feet from the sidewalk so that children could not look into the

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place of business would be invalid, but a requirement of a curtain or screen to a height of four feet might be valid. OAG June 22, 1939 (218e).

The state law does not limit sale within a certain distance of schools or churches, but such restriction can only be imposed by municipal ordinances. OAG Aug. 23, 1937 (218j).

So far as the state law is concerned, a municipal liquor store may be located within 500 feet of a church or school. OAG Dec. 15, 1938 (218g-13).

A door may not be opened between a bar room in a hotel and an adjacent pool room. OAG May 23, 1939 (218g-10).

340.141 REFILLING OF BOTTLES.

HISTORY. 1941 c. 16 s. 1.

340.142 DILUTING OR TAMPERING WITH CONTENTS OF ORIGINAL PACKAGE.

HISTORY. 1941 c. 16 s. 2.

340.143 VIOLATION OF SECTIONS 340.141 OR 340.142 A GROSS MISDEMEANOR.

HISTORY. 1941 c. 16 s. 3.

340.15 COMMISSIONER TO ASSIST PUBLIC EDUCATION RESPECTING EFFECTS OF ALCOHOL; REGULATING ADVERTISING.

HISTORY. Ex. 1934 c. 46 s. 9; M. Supp. s. 3200-29.

The power to regulate advertising, given to the commissioner, and the authority given him to make rules and regulations, is not an unconstitutional delegation of legislative power, and a violation of a regulation is a misdemeanor. OAG April 15, 1937 (82u).

340.16 LICENSES NOT TO ISSUE IN PLACES VOTING AGAINST EIGHTEENTH AMENDMENT; LOCAL REGULATIONS.

HISTORY. Ex. 1934 c. 46 s. 10; 1939 c. 395; M. Supp. s. 3200-30.

Procedure for vote regarding liquor license in certain villages. 1942 OAG 173, Nov. 26, 1941 (218-G-13).

Before a municipal liquor store may be established in Alexandria, or licenses to sell liquor therein may be issued, an affirmative vote of the electors of Douglas County must first be received at a special election held under the provisions of sections 340.25 et seq. 1942 OAG 175, Oct. 28, 1941 (218-G-13).

340.161 MUNICIPAL LIQUOR STORE.

HISTORY. 1941 c. 401 s. 1.

Replevin cannot be successfully maintained against a public officer who, in the course of his duty, seized liquor possessed for an illegal purpose at the time of seizure. *Starret v Pedersen*, 198 M 416, 270 NW 131.

Subject to Section 3200-27 [340.13] municipalities are authorized to issue licenses for the sale of intoxicating liquors in all counties voting for the repeal of the 18th Amendment. OAG Jan. 20, 1934.

The fact that the county option laws are of no effect does not prevent the enforcement of the act in counties voting against licenses under repeal acts. OAG Jan. 24, 1934.

This section has no application to a municipality voting either for or against the repeal of the 18th Amendment. OAG Jan. 26, 1934.

A resident of a dry county may legally purchase intoxicating liquor in a wet county and bring it back with him to a dry county for his own personal use. OAG Jan. 29, 1934.

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A county option vote under the 1915 law does not determine whether county is dry or wet. OAG Feb. 15, 1934.

A village or city may pass an ordinance providing for the issuance of a search warrant and also providing for the abatement of premises for violating the ordinance. OAG April 10, 1934 (218f-3).

Local option vote was of no effect in the Indian country. OAG Oct. 20, 1934 (218j-9).

If a village voted dry under the old local option law, it would now be dry until such time as its voters, at an annual village election, authorize the issuance of licenses to sell intoxicating liquors, but a vote upon a county option law would have no bearing on the question as to whether the village could issue a license, except in those counties that voted for delegates against repeal at the special election on September 12, 1933. OAG Feb. 25, 1935 (218g-5).

Illegal sales and possession for sale constitute a criminal offense in dry counties, but transportation by a person holding a proper license is not an offense. OAG June 24, 1935 (218f).

Liquor bearing a proper tax stamp cannot be destroyed after being used as evidence in a prosecution in a dry county. OAG June 24, 1935 (218f).

Villages in dry counties cannot operate municipally owned liquor stores. OAG Nov. 17, 1936 (218c-3).

Liquor cannot be stored in a dry county awaiting shipment to wet territory. OAG Dec. 17, 1936 (218o).

Searches for illegal liquor in a dry county are not authorized. OAG Dec. 28, 1936 (218f-3).

Where a jury found defendants not guilty of illegal possession the sheriff must return the liquor in his possession to the defendants. OAG Feb. 18, 1937 (218f-1).

Liquor confiscated by a dry county may be disposed of on an order of the court or may be turned over to the liquor control commissioner. OAG Feb. 25, 1937 (218h).

A municipality may prohibit the sale of non-intoxicating malt liquor in an exclusive liquor store. OAG May 27, 1937 (218j-10).

Where a county voting against the repeal of the 18th Amendment votes wet at an election, villages voting dry in 1916 under prior laws and having no election since, may not issue licenses without holding another election. OAG Sept. 21, 1937 (218c-2).

Where a municipality has voted against licensing at last local option election, whether before or after 18th Amendment or its repeal, no sale of liquor can be made. OAG Oct. 20, 1937 (218c-3).

An ordinance permitting the sale of intoxicating liquors in a dry county is invalid, and no prosecution for a violation thereof can be made. OAG Jan. 17, 1938 (259c-16).

The sale of intoxicating liquors is permitted in "wet" counties until such time as the electors vote against the issuance of license. OAG Jan. 27, 1938 (218c-3).

The question of establishing a liquor store may not be submitted at a special election. OAG April 27, 1939 (218g-13).

Club licenses cannot be issued in dry territory nor in communities which have voted for a municipal liquor store. OAG June 30, 1939 (218g-15).

A village may exercise the power of eminent domain for the purpose of acquiring a site for a municipal liquor store building. 1942 OAG 174, April 8, 1942 (218-R).

340.17 SACRAMENTAL WINE; LICENSE OF SALE.

HISTORY. 1919 c. 455 ss. 2, 5, 6; 1921 c. 391 ss. 2, 5; 1923 c. 416 s. 2; G.S. 1923 ss. 3201, 3204, 3206; Ex. 1934 c. 46 s. 11; M. Supp. s. 3200-31.

340.18 SALE FOR MEDICINAL, MECHANICAL AND SCIENTIFIC PURPOSES.

HISTORY. 1887 c. 8 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 s. 44; G.S. 1894 s. 2036; R.L. 1905 s. 1520; 1909 c. 287 s. 1; G.S. 1913 s. 3112; 1919 c. 455 ss. 2 to 5, 7, 8; Ex. 1919 c. 65 s. 1; 1921 c. 391 ss. 2 to 5, 7; 1923 c. 416 s. 2; G.S. 1923 ss. 3201 to 3204, 3207, 3208; Ex. 1934 c. 46 s. 12; 1937 c. 418 s. 1; M. Supp. s. 3200-32.

It is not necessary, in an indictment for selling intoxicating liquors to a minor, to allege that the defendant did not make the sale as a licensed pharmacist. *State v Schmidt*, 111 M 180, 126 NW 487.

Druggists have a right to sell intoxicating liquors for medicinal purposes without a license upon prescription. OAG Jan. 11, 1934.

Each sale by a druggist on prescription requires a new prescription. OAG Jan. 11, 1934.

Consignments of liquors to druggists in a dry city may be transported to the druggists therein without stamps or labels thereon. OAG Feb. 26, 1934.

Veterinarians may write prescriptions for intoxicating liquors. OAG March 3, 1934.

The entire prescription must be written in ink by the issuer thereof. OAG May 14, 1937 (218j-17).

Up to one quart of intoxicating liquor may be sold on a prescription at its original filling, and prescriptions can be refilled once within one month at which time up to one quart of intoxicating liquor may be sold. OAG May 14, 1937 (218j-17).

Pharmacists must file intoxicating liquor prescriptions with the liquor control commissioner. OAG June 8, 1937 (218j-17).

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

HISTORY. 1849 c. 8 ss. 1, 2, 5; 1851 c. 7 ss. 6, 7; R.S. 1851 c. 20 ss. 6, 7; 1852 c. 8 s. 4; 1855 c. 48 ss. 5, 7; 1858 c. 74 ss. 4, 6; P.S. 1858 c. 18 ss. 18, 20; 1860 c. 57 s. 1; 1887 c. 6 s. 4; 1887 c. 7 s. 1; 1887 c. 81 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 ss. 29, 37, 41; 1893 c. 167 s. 1; 1893 c. 179 s. 1; G.S. 1894 ss. 2021, 2029, 2033; 1903 c. 206 s. 1; R.L. 1905 ss. 1519, 1530, 1531, 1550 to 1552; 1911 c. 204 s. 5; 1913 c. 387 s. 5; 1913 c. 484 s. 2; 1913 c. 501 s. 1; G.S. 1913 ss. 3109, 3135, 3137, 3139, 3140, 3147, 3169, 3170, 3171; 1919 c. 455 ss. 24, 25; 1921 c. 39 ss. 14, 15; 1921 c. 335 s. 5; G.S. 1923 ss. 3224, 3225, 3233; 1923 c. 416 s. 8; Ex. 1934 c. 46 s. 13; 1939 c. 101 s. 3; 1939 c. 248 s. 1; M. Supp. s. 3200-33.

In case of a sale to a minor the prosecuting attorney should, before drawing the complaint, determine whether the seller had a license. If he had not, the accused should be charged with the offense of selling without a license and the case should be prosecuted as a gross misdemeanor. If the accused has a license to sell, the complaint should so allege, and the crime charged will be a misdemeanor and should be prosecuted as such. 1942 OAG 171, Feb. 6, 1942 (218j-12).

In a prosecution for selling without a license, the burden of proving license is upon defendant. *State v Schmahl*, 25 M 370.

The sale in quantities less than five gallons without license is illegal, though made by a wholesale dealer, and the liquor be in corked bottle, and not to be drunk on the premises. *State v Benz*, 41 M 30, 42 NW 547; *State v Brackett*, 41 M 33, 42 NW 548.

A brewer cannot sell in less quantities than five gallons without a license. *State v Schroeder*, 43 M 231, 45 NW 149.

An ordinance prohibiting sales without a license, not specifying any quantity, is valid, certainly as to sales of quantities less than five gallons. *State v Priestler*, 43 M 373, 45 NW 712.

An indictment charging that defendant sold one gill of whiskey shows that it was less than five gallons. *State v Wyman*, 42 M 182, 43 NW 1116.

Laws 1901, Chapter 252, prohibiting and punishing the maintaining of blind pigs, or places or devices for the unlawful sale of intoxicating liquors, does not

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repeal any part of General Statutes 1894, Section 2029, providing for the punishment of the sale of such liquors without a license. *State v McCoy*, 86 M 149, 90 NW 305.

The defendant was charged in justice court, on a duly verified complaint, with keeping an unlicensed drinking place, contrary to Revised Laws 1905, Section 1550. A warrant for his arrest was issued, which included a warrant for a search of the premises and a seizure of all intoxicating liquors and all other property and things used in keeping such place, found therein. He was convicted and sentenced to pay a fine of \$100.00, and in default thereof to be confined in the county jail for 90 days. He appealed to the district court on questions of law alone, and the conviction was affirmed. The sheriff was also ordered to destroy the liquors and to sell the other property used in keeping such place found and seized therein by virtue of the search warrant. The justice had jurisdiction of the offense and the defendant was legally convicted, although no maximum penalty was fixed by the statute, and the value of the property seized was \$600.00. *State v Hanson*, 114 M 136, 139 NW 79. See also *State v Stoffels*, 89 M 205, and *State v Knight*, 106 M 371, 119 NW 56.

A careless or intentional failure to exercise due diligence in the performance of an official duty, such as failure to enforce prohibition laws, is ground for removal of a sheriff. *Removal of Mesenbrink*, 211 M 117, 300 NW 398.

An unlawful sale in prohibition territory is punishable under section 3200-51 [340.36], while other unlawful sales are punishable under this section. OAG Nov. 22, 1935 (259d-5).

Penalty for sale of ethyl alcohol as a beverage after June 1, 1939, will be a gross misdemeanor, in view of Laws 1939, Chapter 101. The sale of liquor without a proper stamp thereon after June 1, 1939, will be a gross misdemeanor, in view of Laws 1939, Chapter 101. A sale at a prohibited time is to be treated as selling without a license and punished under paragraph (6) and not under paragraph (5) as for a gross misdemeanor, and paragraph (6) fixes the penalty for violations of Laws 1939, Chapter 429, relating to closing hours. A sale of liquor without a license is a gross misdemeanor, and there will be a change in penalty on June 1, because Laws 1939, Chapter 248, supersedes Laws 1939, Chapter 101, in so far as inconsistent. Laws 1939, Chapter 101, amending this section, is in effect but is superseded by Laws 1939, Chapter 248, in so far as the two acts are inconsistent. OAG May 12, 1939 (218e).

A municipal officer issuing licenses in excess of the limit provided by section 3200-25 [340.11] is guilty of a gross misdemeanor and subject to removal from office. OAG July 20, 1939 (218g-1).

Whether an illegal sale of liquor by the mayor of a city involves a violation of his official oath depends on the nature of his oath and the place of the sale. OAG Aug. 21, 1934 (61f).

If a manufacturer has been convicted of a violation of the liquor act, the commissioner may revoke his license summarily, but in the absence of a conviction he is entitled to a hearing, and the power to revoke after a hearing carries with it the lesser power to suspend license for a reasonable length of time. OAG Aug. 2, 1939 (218h-3).

A violation of a regulation of the commissioner constitutes a misdemeanor. OAG April 3, 1934 (218f).

Section 3200-51 [340.36] relating to sales in dry territory, is not exclusive and a party may be prosecuted in a dry county for selling without a license under section 3200-25 [340.11], which is now a gross misdemeanor. OAG Aug. 7, 1939 (218f).

A license may be revoked on proof of various violations of the law. Proof may be other than convictions. 1942 OAG 169, Oct. 21, 1941 (217B-9).

Where employee sells to a minor there is ground for revocation of license. 1942 OAG 171, Feb. 6, 1942 (218J-12).

Even when defendant admits selling liquor to a minor, the governing body in considering revocation of a license must determine as a matter of fact whether he "wilfully violated the law". OAG Jan. 24, 1944 (218g-14).

340.20 LOCAL OPTION ELECTIONS IN VILLAGES.

HISTORY. 1858 c. 74 s. 14; P.S. 1858 c. 18 s. 28; G.S. 1866 c. 16 s. 1; 1870 c. 32; 1875 c. 112; G.S. 1878 c. 16 s. 1; G.S. 1894 s. 1990; 1905 c. 10 s. 1; R.L. 1905 s. 1528; G.S. 1913 ss. 3128, 3129; Ex. 1934 c. 46 s. 15; M. Supp. s. 3200-35.

The defendant was convicted of the offense of selling intoxicating liquors in a village, after the people thereof had voted against issuance of license for such sales, contrary to the provisions of Laws 1895, Chapter 259. The statute is not void as unauthorized class legislation and is constitutional. *State v Johnson*, 86 M 121, 90 NW 161, 1133.

The record of an annual town meeting, showing that the question of issuing licenses for the sale of intoxicating liquors was submitted to the meeting to be determined by ballot, and that the ballots were canvassed, showing 24 for license and 105 against, is competent and sufficient evidence to sustain a finding that the electors of the town legally voted against the issuance of such license. *State v Bollenbach*, 98 M 480, 108 NW 3.

Revised Laws 1905, Section 1528, granting the right of local option to towns and incorporated villages, does not apply to the cities of the state. *Kleppe v Gard*, 109 M 251, 123 NW 665.

This section refers only to the annual election. OAG Jan. 18, 1934.

A special election cannot be held to vote on the question of licensing the sale of intoxicating liquors. OAG Dec. 14, 1934 (218g-11); OAG April 29, 1935 (339g-1); OAG Aug. 11, 1938 (218c-3); OAG March 15, 1939 (218g-11).

Where the town and the village are one election district, the vote binds the village, otherwise not. OAG Aug. 22, 1936 (218c-3).

The electors of a village cannot vote on the question of the operation of a municipal liquor store. OAG Feb. 26, 1937 (218c-3); OAG Aug. 11, 1938 (218c-3).

The question of establishing a liquor store may not be submitted at a special election. OAG April 27, 1939 (218g-13).

Election upon question submitted by village council and not upon a petition of the electors was ineffective. OAG Jan. 27, 1938 (218c-3).

Before a municipal liquor store may be established in a municipality in a dry county, or a license to sell liquor therein issued, an affirmative vote of the electors of the county must first be received at a special election. 1942 OAG 175 Oct. 28, 1941 (218G-13).

A no license vote constitutes prohibition from and after the date of the election. OAG Nov. 27, 1944 (218c).

340.21 RESULT OF ELECTION.

HISTORY. 1905 c. 10 s. 2; G.S. 1913 s. 3130; Ex. 1934 c. 46 s. 16; M. Supp. s. 3200-36.

If the vote is against licensing, the council may not continue licenses already issued to the end of their license term. OAG Nov. 20, 1934 (218e).

If the voters authorize continuance of licensing, the council may refuse to grant any license. OAG Nov. 20, 1934 (218e).

340.22 LOCAL OPTION ELECTION IN CITIES OF FOURTH CLASS ON PETITION.

HISTORY. 1858 c. 74 s. 14; P.S. 1858 c. 18 s. 28; G.S. 1866 c. 16 s. 1; 1870 c. 32; 1875 c. 112; 1913 c. 387 s. 2; G.S. 1913 s. 3132; Ex. 1934 c. 46 s. 17; M. Supp. s. 3200-37.

A petition duly signed and asking that the question of granting liquor licenses be submitted at the next city election was filed with the city clerk January 21, 1941, less than 20 days before the regular January, 1941, city election, but 384 days before the 1942 city election, is manifestly a compliance with the provisions of this section, and the question should be submitted to the voters of the city at the 1942 election. 1942 OAG 167, Oct. 16, 1941 (218c-1).

The petition for the election need not be verified. OAG Feb. 20, 1934.

A city or village may not vote on the question of liquor licenses at a special election. OAG April 27, 1939 (218g-13).

Procedure for local option election in a city of the fourth class, or in village. 1942 OAG 167, Oct. 16, 1941 (218C-1); 1942 OAG 173, Nov. 26, 1941 (218G-13).

340.23 BALLOTS; MARKING AND CASTING; CANVASS; RESULT; MANUFACTURE; PRESCRIPTIONS.

HISTORY. 1858 c. 74 s. 14; P.S. 1858 c. 18 s. 28; G.S. 1866 c. 16 s. 1; 1870 c. 32; 1875 c. 112; 1913 c. 387 s. 3; G.S. 1913 s. 3133; Ex. 1934 c. 46 s. 18; M. Supp. s. 3200-38.

The electors of a city may vote on the question of issuing licenses, but the city council is to determine whether or not the city shall establish a municipal liquor store or whether licenses shall be issued to private persons. OAG Feb. 7, 1935 (218c-1).

It is immaterial what color ballot is used, and there is no violation of law where a challenger properly presents at polls lists of voters as they appear and passes the names on to a third party, presumably for the purpose of advising him who has voted, so long as he conducts himself in an orderly manner, and the ballots used must be headed "license ballot", and have printed on them the words "for license" and "against license". OAG April 22, 1939 (218c-1).

340.24 CHARTER AND ORDINANCE PROVISIONS CONTINUED; SUSPENSION.

HISTORY. 1913 c. 387 s. 4; G.S. 1913 s. 3134; Ex. 1934 c. 46 s. 19; M. Supp. s. 3200-39.

Where the question of liquor license was held under the city charter, the question could again be submitted under the state liquor control act the following year, notwithstanding the limitations contained in the city charter. OAG March 15, 1938 (218c-1).

A village which voted dry in 1933 could not issue liquor license without an election. OAG Feb. 20, 1934.

340.25 LOCAL OPTION ELECTIONS IN COUNTIES; PETITION.

HISTORY. 1915 c. 23 s. 2; Ex. 1934 c. 46 s. 20; M. Supp. s. 3200-40; 1945 c. 305 s. 1.

Where some of the verifications on the petition are dated prior to Nov. 3, 1942, and some subsequent to that date, the words "last preceding general election" refer to the last general election before the presentation of the petition to the county auditor, in this case the election of Nov. 3, 1942. 1942 OAG 168, Nov. 12, 1942 (218c-1).

Sections 3200-40 to 3200-56 [340.25 to 340.40] have application to county option elections only. OAG Feb. 20, 1934.

Each voter signing a petition is required to swear or affirm to the form of oath prescribed by statute but a single petition consisting of several sheets may be certified by a notary or other officer at the end of the last sheet. OAG June 6, 1935 (218c-2).

Petition must be circulated by a person authorized by law to take acknowledgments. OAG July 30, 1935 (218c-2).

Procedural requirements in local option elections. 1942 OAG 168, Nov. 12, 1942 (218C-1); 1942 OAG 178, Oct. 28, 1941 (218G-13).

340.26 SPECIAL ELECTION.

HISTORY. 1915 c. 23 s. 3; Ex. 1934 c. 46 s. 21; M. Supp. s. 3200-41; 1945 c. 305 s. 2.

Petitions may not be circulated prior to the three-year period. OAG Feb. 2, 1938 (218c-2).

340.27 NOTICE OF SPECIAL ELECTION.

HISTORY. 1915 c. 23 s. 4; Ex. 1934 c. 46 s. 22; M. Supp. s. 3200-42.

340.28 JUDGES AND CLERKS OF ELECTION.

HISTORY. 1915 c. 23 s. 5; Ex. 1934 c. 46 s. 23; M. Supp. s. 3200-43.

Members of village council need not act as judges in a county option election but may appoint three judges in their place. OAG Sept. 21, 1937 (218c-2).

340.29 CHALLENGE TO VOTERS.

HISTORY. 1915 c. 23 s. 6; Ex. 1934 c. 46 s. 24; M. Supp. s. 3200-44.

340.30 BALLOTS.

HISTORY. 1915 c. 23 s. 7; Ex. 1934 c. 46 s. 25; M. Supp. s. 3200-45.

340.31 LAWS APPLICABLE; OATH TO VOTERS.

HISTORY. 1915 c. 23 s. 8; Ex. 1934 c. 46 s. 26; M. Supp. s. 3200-46.

340.32 COUNTY CANVASSING BOARD; CANVASS AND CERTIFICATION OF RESULT.

HISTORY. 1915 c. 23 s. 9; Ex. 1934 c. 46 s. 27; M. Supp. s. 3200-47.

340.33 CONTEST OF ELECTION; MANDAMUS.

HISTORY. 1915 c. 23 s. 10; Ex. 1934 c. 46 s. 28; M. Supp. s. 3200-48.

340.34 RESULT OF ELECTION; ACCRUED OFFENSES.

HISTORY. 1915 c. 23 s. 11; Ex. 1934 c. 46 s. 29; M. Supp. s. 3200-49.

If county votes wet, the question whether a village council may issue licenses without another election depends entirely upon the result of the last local-option election held in the village, and the village is also wet if it has not had any vote at a local option election. OAG Sept. 21, 1937 (218c-2).

Where county voting against repeal of 18th Amendment votes wet at an election, villages voting dry in 1916 under prior laws and having no election since, may not issue licenses without holding another election. OAG Sept. 21, 1937 (218c-2).

340.35 LICENSES WITHHELD AND SUSPENDED; REFUND.

HISTORY. 1915 c. 23 s. 12; Ex. 1934 c. 46 s. 30; M. Supp. s. 3200-50.

A county option election binds the municipalities, and they cannot conduct a separate vote, if the county votes dry. OAG Sept. 24, 1936 (218c-2).

340.36 OFFENSES IN PROHIBITION TERRITORY; UNEXPIRED LICENSES; LIQUOR MANUFACTURED AND STORED; PRESCRIPTIONS BY PHYSICIANS.

HISTORY. 1915 c. 23 s. 13; Ex. 1934 c. 46 s. 31; M. Supp. s. 3200-51.

Replevin cannot be successfully maintained against a public officer who, in the course of his duty, seized liquor possessed for an illegal purpose at the time of seizure. *Starrett v Pedersen*, 198 M 416, 270 NW 131.

Every citizen, regardless of county in which he lives, has the right to possess intoxicating liquors, which are not "contraband", and has the right to keep, consume, and to give them away, it being only the sale or possession with intent to sell which the law forbids and punishes. The minimum punishment for violations of statutes defining offenses in prohibition territory is a fine of not less than \$50.00

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and imprisonment not less than 30 days, notwithstanding the section names the offense a misdemeanor. State v Kelly, 218 M 247, 15 NW(2d) 554.

Unlawful sale in prohibition territory is punishable under this section, while other unlawful sales are punishable under section 340.19. OAG Nov. 22, 1935 (259d-5); OAG April 27, 1936 (259c-16).

Justice court has no jurisdiction where the penalty is both fine and imprisonment. OAG Jan. 20, 1937 (266b-16).

Prosecutions under this section are to be in the district court and the maximum penalty is 90 days and \$100.00 fine and costs of prosecution. OAG April 16, 1937 (494b-23).

A municipal court having only jurisdiction in criminal cases limited to jurisdiction of a justice court cannot try prosecutions under this section, but can only bind the defendant over to the district court. OAG Aug. 7, 1939 (218f).

This section, relating to sales in dry territory, is not exclusive and a party may be prosecuted in a dry county for selling without a license under section 340.11, which is now a gross misdemeanor. OAG Aug. 7, 1939 (218f).

Search and seizure in cases of unlawful possession. 1942 OAG 172, Aug. 29, 1941 (218F-3).

340.37 CERTIFICATE OF RESULT OF ELECTION AS EVIDENCE IN PLEADINGS.

HISTORY. 1915 c. 23 s. 14; Ex. 1934 c. 46 s. 32; M. Supp. s. 3200-52.

340.38 ARREST OF VIOLATORS; COMPLAINTS AND PROSECUTIONS.

HISTORY. 1915 c. 23 s. 15; Ex. 1934 c. 46 s. 33; M. Supp. s. 3200-53.

Sheriff's official duty implies alertness and initiative to enforce laws. While he need not function as a detective, neither can he remain blind and dormant to actions of law breakers. Removal of Mesenbrink, 211 M 117, 300 NW 398.

340.39 STATUTES AND ORDINANCES, WHEN NOT OPERATIVE.

HISTORY. 1915 c. 23 s. 16; Ex. 1934 c. 46 s. 34; M. Supp. s. 3200-54.

Where the ordinance permits, a search warrant may issue to search places suspected of selling intoxicating liquors. OAG March 20, 1934.

340.40 PETITION FOR ELECTION; ORDER; NOTICE; CERTIFICATE.

HISTORY. 1915 c. 23 s. 18; Ex. 1934 c. 46 s. 36; M. Supp. s. 3200-56.

Each voter signing a petition is required to swear or affirm to the form of oath prescribed by the statute, but a single petition consisting of several sheets may be certified by a notary or other officer at the end of the last sheet. OAG June 6, 1935 (218c-2).

340.401 DEFINITIONS.

HISTORY. 1943 c. 460 s. 1.

340.402 LICENSES REQUIRED.

HISTORY. 1943 c. 460 s. 2.

340.403 BOND.

HISTORY. 1943 c. 460 s. 3.

340.404 EXISTING LICENSES.

HISTORY. 1943 c. 460 s. 4.

340.405 NO INTEREST IN RETAIL BUSINESS.

HISTORY. 1943 c. 460 s. 5.

340.406 NO EXCLUSIVE CONTRACTS.

HISTORY. 1943 c. 460 s. 6.

340.407 VIOLATIONS.

HISTORY. 1943 c. 460 ss. 7, 8.

340.41 LIQUOR STORES MAY SELL FOOD, TOBACCO, AND SOFT DRINKS.

HISTORY. 1937 c. 393 s. 1; M. Supp. s. 3200-58a.

This act applies to Hennepin county only and permits the sale of food as well as the other items set forth in section 340.07. OAG July 5, 1938 (218j-10).

Sales of other products by municipal liquor stores. OAG March 26, 1944 (218j-10).

340.44 LIQUOR TAX ACT; DEFINITIONS.

HISTORY. Ex. 1934 c. 58 s. 1; M. Supp. s. 3200-59.

This state cannot tax malt liquors when sold on the Ft. Snelling reservation. OAG March 25, 1938 (218k).

340.45 FILING PROOF OF FEDERAL PERMIT.

HISTORY. Ex. 1934 c. 58 s. 2; M. Supp. s. 3200-60.

340.46 LABELS ON CONTAINERS.

HISTORY. Ex. 1934 c. 58 s. 3; M. Supp. s. 3200-61.

A label "12 degrees proof spirits" is misleading, as "12 degree spirits" would indicate 12 per cent while "12 proof spirits" would indicate six per cent liquor. OAG Aug. 3, 1934 (218a-1).

Trade-mark must be registered with the secretary of state to be filed with the liquor control commissioner and one filing trade-mark with the secretary of state prima facie has a right to ship liquors into the state as against one who has filed trade-mark only with the liquor control commissioner. OAG April 27, 1935 (218m).

340.461 CONTAINERS LABELED.

HISTORY. 1943 c. 113.

240.47 EXCISE TAX.

HISTORY. Ex. 1934 c. 58 s. 4; Ex. 1937 c. 8 s. 1; M. Supp. s. 3200-62; 1941 c. 47; 1943 c. 309 s. 1.

Brewers are liable for the tax on the beer given to employees pursuant to their contract of employment. OAG June 29, 1939 (218k).

There is no statute prohibiting the sale of neutral spirits 100 proof or less or ethyl alcohol. OAG Jan. 18, 1939 (218j).

The commissioner may not seize liquor consigned to the officer's mess at Fort Snelling or at the naval training reservation. OAG Oct. 2, 1944 (218L-4).

340.48 VIOLATION; PENALTY.

HISTORY. Ex. 1937 c. 8 s. 2; M. Supp. s. 3200-62a.

The mere possession of a bottle of alcohol does not justify a prosecution. OAG Aug. 23, 1938 (259d-7).

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Natural fermented cider artificially carbonated should be included in wine classification for taxation purposes. OAG Dec. 11, 1934 (218k).

"Natural sparkling wine" is one that generates its own carbonization while an "artificial sparkling wine" is one that is artificially carbonated. OAG Jan. 17, 1934.

A city establishing a municipal liquor store is not exempt from any liquor taxes. OAG Jan. 16, 1934.

340.49 STAMPS.

HISTORY. Ex. 1934 c. 58 s. 5; M. Supp. s. 3200-63.

The state treasurer may issue liquor and beer stamps in excess of \$50,000 to the liquor control commissioner upon his requisition. OAG Nov. 16, 1934 (218h-6).

A meter machine cannot be substituted for stamps. OAG May 9, 1936 (218n).

A pledge of warehouse receipts as collateral does not constitute a violation of the act, but a pledge seeking to enforce lien can only sell receipts on a court order, and only after stamps and labels have been affixed by direction of the court. OAG May 27, 1936 (218j-18).

Contracts for the printing of certification labels for use in administering the liquor control act are to be let by the state treasurer. OAG March 4, 1938 (454k).

Expenses incurred by the state treasurer in connection with stamps and labels for the liquor control commissioner are now to be paid by the state treasurer, the sale of such stamps now being exclusively his duty. OAG Aug. 29, 1939 (454-L).

340.50 EXCEPTIONS.

HISTORY. Ex. 1934 c. 58 s. 6; Ex. 1937 c. 240 s. 1; M. Supp. s. 3200-64.

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

HISTORY. Ex. 1934 c. 58 s. 7; M. Supp. s. 3200-65.

In so far as the tax law is concerned the commissioner is charged with the duty of enforcing and administering the provisions thereof and the primary responsibility of apprehending violators rests upon him, though local officials are primarily charged with the duty of enforcing sale provisions. OAG Aug. 23, 1934 (218h-2).

The commissioner has power to expend money from the sale of tax stamps to administer various acts, but cannot use the revenue obtained by the issuance of licenses, permits, and sale of labels. OAG Feb. 20, 1934.

If an intoxicating liquor inspector is rightfully within a place where non-intoxicating liquors are sold, he may seize intoxicating liquor for the purpose of using the same for evidence in a prosecution, but he may not search the premises for intoxicating liquors, and in such case a search warrant is not necessary. OAG Feb. 5, 1935 (218f).

No search warrants may be issued. OAG Feb. 8, 1934.

The mere possession of a bottle of liquor without other evidence is not sufficient to show a violation of law, and seizure is not justified. OAG Feb. 16, 1938 (218f-3).

340.52 INVOICES OF LIQUORS IMPORTED; CHECKING.

HISTORY. Ex. 1934 c. 58 s. 8; M. Supp. s. 3200-66.

340.53 UNLAWFUL AFFIXING OF LABELS; FORGERY AND COUNTERFEITING.

HISTORY. Ex. 1934 c. 58 s. 9; M. Supp. s. 3200-67.

340.54 UNSTAMPED LIQUOR CONFISCATED.

HISTORY. Ex. 1934 c. 58 s. 10; M. Supp. s. 3200-68; 1945 c. 310 s. 1.

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See notes under section 340.67. Confiscation of unstamped liquor. United States v Various Cases of Liquor, 55 F. Supp. 84.

This section is limited to confiscation of unstamped liquors, and the procedure for seizure of stock of liquor used by proprietor who has no license should he had under section 340.65. OAG July 7, 1939 (217f-3).

Commissioner could pass a regulation making it unlawful for a person to have in his possession liquor without proper tax stamps and labels, and a violation thereof would constitute a misdemeanor, though the person in possession has it for his own personal consumption. OAG Nov. 5, 1934 (218k).

Liquor bearing proper tax stamp cannot be destroyed after being used as evidence in a prosecution in a dry county. OAG June 24, 1935 (218f).

Express companies may not object to the shipping of liquor by county inspectors to the office of the liquor control commissioner, since any liquor seized or purchased for evidence or confiscated loses its character as intoxicating liquor. OAG Sept. 11, 1939 (218f-1).

340.55 OFFENSES; FELONY.

HISTORY. Ex. 1934 c. 58 s. 11; M. Supp. s. 3200-69.

No case of felony against the seller of a bottle of liquor falsely branded is made out unless there is proof that the seller was the one who actually refilled the bottle with moonshine. OAG Aug. 23, 1934 (218f).

An unlicensed person selling liquor without paying the tax may be prosecuted under the last part of this section. OAG Sept. 26, 1934 (218k).

A sale alone does not satisfy the requirements of this section so as to warrant a charge of felony, an intent to evade, avoid, or defraud the state being an element. OAG Aug. 23, 1938 (259d-7).

340.56 OFFENSES; MISDEMEANOR.

HISTORY. Ex. 1934 c. 58 s. 12; M. Supp. s. 3200-70.

340.57 CERTAIN CITIES MAY ISSUE LIQUOR LICENSES.

HISTORY. 1935 c. 78 s. 1; M. Supp. s. 3200-71.

340.58 RESTRICTIONS.

HISTORY. 1935 c. 78 s. 2; M. Supp. s. 3200-72.

A private school training persons preparatory to taking examinations for West Point and Annapolis, was an academy. OAG Dec. 23, 1935 (218g-1b).

340.59 LAW REPEALED BY POPULAR VOTE.

HISTORY. 1935 c. 78 s. 3; M. Supp. s. 3200-73.

340.60 LIQUOR RECEIPTS PAID INTO STATE TREASURY.

HISTORY. 1852 c. 8 ss. 5, 6; 1895 c. 130 s. 1; R.L. 1905 s. 1539; 1907 c. 433 s. 1; 1909 c. 450 s. 1; 1913 c. 248 s. 1; G.S. 1913 s. 3153; 1935 c. 130 s. 1; M. Supp. s. 3200-75.

340.61 OUTSTANDING CERTIFICATES TO BE REDEEMED.

HISTORY. 1935 c. 130 s. 2; M. Supp. s. 3200-76; 1943 c. 308 s. 1.

340.62 CERTAIN LIQUOR MUST BE REGISTERED.

HISTORY. 1935 c. 390; M. Supp. s. 3200-78; 1943 c. 308 s. 1; 1945 c. 291 s. 1.

The validity of this law is not affected by an existing valid license to import liquor prohibited hereby. The act, though discriminating in favor of liquor processed within the state, and not an incident of reasonable regulation of the liquor

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traffic, held valid under the 21st Amendment to the federal constitution. *Mahoney v Triner Corp.* 304 US 401, 58 SC 952, 82 L. Ed. 1424, reversing (DC-Minn.), 20 F. Supp. 1019.

In connection with a registered brand name, there may be used such common name designating the contents of the bottle, such as whiskey, gin, cordial, rye whiskey, Scotch whiskey, five-star brandy, etc. OAG May 15, 1935 (218m).

Brand name must be registered under the trade-mark act, copyrighting of label containing the brand name being insufficient. OAG July 9, 1938 (218m).

Brand "Old Atlas" could be used under copyright name "Atlas". OAG April 13, 1938 (218m).

A certificate of registration for "AA" was not sufficient to allow shipments of whiskey marketed under the brand name "Ancient Age". OAG May 4, 1939 (218m).

Equal protection and the police power. 23 MLR 87.

340.63 DESTRUCTION OR DISPOSITION OF SEIZED LIQUORS.

HISTORY. 1852 c. 8 s. 12; 1854 c. 31 ss. 4, 6; 1856 c. 5 s. 26; P.S. 1858 c. 18 ss. 9, 11; 1937 c. 151 s. 1; M. Supp. s. 3200-79; 1943 c. 165 s. 1; 1945 c. 307 s. 1.

Provision for forfeiture follows as an incident to conviction as a proper exercise of the police power and the municipal court had jurisdiction to order the forfeiture, though the property was of the value in excess of \$7,500. *Duluth v Cervený*, 218 M 511, 16 NW(2d) 779.

340.64 TO REPORT TO DEPARTMENT OF SOCIAL SECURITY.

HISTORY. 1937 c. 151 s. 2; M. Supp. s. 3200-80.

340.65 SEARCH AND SEIZURE.

HISTORY. 1901 c. 252 s. 2; R.L. 1905 s. 1553; G.S. 1913 s. 3172; 1937 c. 185 s. 1; M. Supp. s. 3200-81.

An owner cannot replevin from the sheriff intoxicating liquor, even though the state and federal taxes have been paid thereon, if the owner was unlawfully in possession of the same at the time they were seized. *Starrett v Pedersen*, 198 M 416, 270 NW 131.

The requirement that a search warrant be supported by a sworn complaint is peculiar to Minnesota and a very few other states. *State v Kelly*, 218 M 270, 15 NW(2d) 566.

The proper procedure for seizing a stock of liquor used by a proprietor who has no license to sell is to go to the county attorney, sign a written complaint for violation of section 340.11, and obtain a search warrant pursuant to this section, the seizure of the liquor to be then handled by the sheriff. OAG July 7, 1939 (217f-3).

340.66 POSSESSION PRIMA FACIE EVIDENCE.

HISTORY. 1901 c. 252 s. 3; R.L. 1905 s. 1554; G.S. 1913 s. 3173; 1937 c. 185 s. 2; M. Supp. s. 3200-82.

See *State v Kelly*, 218 M 270, 15 NW(2d) 566.

340.67 OFFICER TO MAKE INVENTORY.

HISTORY. 1937 c. 185 s. 3; M. Supp. s. 3200-83.

Forfeiture is a proceeding in rem against the property used unlawfully. The prosecution is by the state against the thing itself. *Duluth v Cervený*, 218 M 512, 16 NW(2d) 779.

This section provides that after the defendant shall be convicted, all the property so seized shall be destroyed or disposed of as ordered by the court. It is entirely a question for the court to determine the kind of an order he desires to make. 1942 OAG 172, Aug. 29, 1941 (218f-3).

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340.69 CERTAIN ACTS DECLARED TO BE MURDER.

HISTORY. 1923 c. 393 s. 1; G.S. 1923 s. 3237; M.S. 1927 s. 3237.

340.70 SALE OF INTOXICATING LIQUORS LIABLE TO CAUSE PERMANENT PHYSICAL OR MENTAL INJURY A FELONY.

HISTORY. 1925 c. 221 s. 1; M.S. 1927 s. 3238-1.

340.71 SELLING OR GIVING AWAY ANY POISONOUS LIQUOR A GROSS MISDEMEANOR.

HISTORY. 1929 c. 249 s. 1; M. Supp. s. 3238-2½.

This section is still in force. OAG June 21, 1933.

Under an ordinance intended for the suppression of the unrestrained traffic in intoxicating liquors, and which forbids selling, dealing in, or disposing of the same without a license, a person engaged in such unlicensed traffic may, under a prosecution for the unlawful disposition of such liquors contrary to the terms of the ordinance, be convicted on proof of a gratuitous as well as other disposition thereof. *State v Deusting*, 33 M 102, 22 NW 442.

340.72 PLACES WHERE SALE FORBIDDEN.

HISTORY. 1866 c. 40 s. 1; G.S. 1866 c. 16 s. 1; 1875 c. 112; G.S. 1878 c. 16 ss. 1, 17; 1889 c. 21 s. 1; G.S. 1894 ss. 1990, 2006, 2008; 1895 c. 191 s. 1; R.L. 1905 s. 1533; G.S. 1913 s. 3142; M.S. 1927 s. 3238-3.

The provision authorizing manufacturers to sell out of their districts is constitutional. *State v Johnson*, 86 M 121, 90 NW 161, 1133.

Revised Laws 1905, Section 1533, is a general provision applying to all municipalities having local option as to the sale of intoxicants, and superseded Laws 1885, Chapter 145, Section 48. *State ex rel v Village Council of Osakis*, 112 M 365, 128 NW 295.

Revised Laws 1905, Section 1533, forbidding the sale of intoxicating liquor in any town or municipality in which a majority of votes at the last election at which the question of license was voted upon shall not have been in favor of license, has no application to cities of the fourth class operating under home rule charters. *Thune v Hetland*, 114 M 395, 131 NW 372.

Under the law creating the city of Warren, when a majority of the votes cast at any annual city election has been cast against granting license to sell intoxicating liquors, no license can be granted until a majority of all votes cast at a subsequent annual city election is in favor of granting such license. By "majority" is meant a majority of the whole number of electors voting at the election, and not a majority of the votes recorded for or against license. *Lodoen v City of Warren*, 118 M 371, 136 NW 1031.

County board, with the approval of the state fair board and of the board of the town in which the state fair grounds are situated, may issue a license to sell non-intoxicating beer to a restaurant to be located on the fair grounds. OAG June 17, 1933.

The state law does not limit sale within certain distances of schools or churches, but such restriction can only be imposed by municipal ordinances. OAG Aug. 23, 1937 (218j).

So far as the state law is concerned, municipal liquor store may be located within 500 feet of a church or school. OAG Dec. 15, 1938 (218g-13).

340.73 PERSONS TO WHOM SALES ARE ILLEGAL.

HISTORY. 1860 c. 47 s. 1; 1861 c. 54 s. 1; G.S. 1866 c. 16 ss. 10, 13; 1877 c. 44 s. 1; G.S. 1878 c. 16 ss. 10, 13; 1887 c. 81 s. 1; G.S. 1894 ss. 1999, 2002; 1895 c. 90 s. 1; R.L. 1905 s. 1534; 1911 c. 83; 1913 c. 538 s. 1; G.S. 1913 s. 3148; M.S. 1927 s. 3238-4.

1. Minors
2. Indians
3. Habitual drunkards

1. Minors

In a prosecution for the sale of intoxicating liquor to a minor, under General Statutes 1878, Chapter 16, Section 10, which forbids "any person" to so dispose of intoxicating liquors, it is not material whether the accused was a person licensed to sell intoxicating liquors. *State v McGinnis*, 30 M 48, 14 NW 256.

Indictment for selling beer to a minor. Where several offenses of the same kind form parts of one entire transaction, evidence may be given of all, and it is in the discretion of the judge whether the state shall be required to elect. *State v Mueller*, 38 M 497, 499, 38 NW 691.

Defendant was charged with the offense of selling intoxicating liquor to a minor. The prosecution was permitted to show that on another occasion, after the sale charged in the indictment, defendant in person has sold intoxicants to minors at said saloon. This evidence was inadmissible under the general rule that evidence of a distinct and independent offense cannot be admitted at the trial of a defendant charged with the commission of a crime. *State v Austin*, 74 M 463, 77 NW 301.

The several sections of Revised Laws 1905, regulating the sale of intoxicating liquors, construed and held to prohibit the sale to minors precisely as such sales were prohibited prior to the recent revision of the statutes. *State v Stroschein*, 99 M 248, 109 NW 235.

It is not necessary, in an indictment for selling intoxicating liquors to a minor, to allege that the defendant did not make the sale as a licensed pharmacist. *State v Schmidt*, 111 M 180, 126 NW 487.

The sale of intoxicating liquor to a minor is still a gross misdemeanor, though a sale of non-intoxicating malt liquor is a misdemeanor. OAG July 10, 1939 (218j-12).

In case of sale to a minor the prosecutor should determine whether the accused has a license. If not he should be charged with selling without a license, a gross misdemeanor. If he has a license, the complaint should so allege, and he should be charged with selling to a minor, which is a misdemeanor. 1942 OAG 171, Feb. 6, 1942 (218J-12).

An ordinance prohibiting admission of women to barrooms is a valid provision. 1942 OAG 233, Dec. 16, 1941 (498A).

2. Indians

General Statutes 1894, Section 2002, forbids the sale of intoxicating liquors to any Indian, without regard to the question whether he has or has not severed his tribal relations, adopted the habits of civilization, and become a citizen of the United States, by complying with the provisions of the United States "Land in Severalty Act," of February 8, 1887. As thus construed, the statute is a valid exercise of the police power of the state and is not in conflict with the State Constitution, Article 4, Section 33, or the 14th Amendment of the Federal Constitution, Section 1. *State v Wise*, 70 M 99, 72 NW 843.

Sale of 3.2 beer to Indians is not unlawful. OAG May 29, 1944 (218j-10).

3. Habitual drunkards

A single sale to an habitual drunkard, made by the clerk of a person authorized to sell spirituous liquors, at his place of business, made in his absence, is not sufficient to raise a presumption that the clerk was authorized by his employer to make such unlawful sale. *State v Mahoney*, 23 M 181.

In a prosecution under General Statutes, Chapter 16, Section 11, as amended, upon a charge of furnishing "one glass of spirituous liquor, to-wit, whiskey," to C, an habitual drunkard, it is not necessary to prove that the liquor furnished was

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whiskey, nor that the defendant knew that C was an habitual drunkard. State v Heck, 23 M 549.

The statute forbidding the sale of intoxicating liquor to an habitual drunkard applies not merely to those licensed to sell intoxicating liquor but to "any person". The statute prohibiting a sale or disposal of such liquors, a complaint alleging a sale and disposal charges but one offense. It is sufficient to allege a sale of "intoxicating liquors" merely, the statute dispensing with the necessity for proof of (and hence with the need of alleging) the name or kind of liquor sold. State v McGinnis, 30 M 52, 14 NW 258.

Voluntary intoxication as contributory negligence. 29 MLR 72.

340.74 FRAUDULENT SHIPMENTS.

HISTORY. 1901 c. 252 s. 4; R.L. 1905 s. 1555; G.S. 1913 s. 3174; M.S. 1927 s. 3238-5.

340.75 LIQUOR NEAR STATE FAIR GROUNDS.

HISTORY. 1895 c. 103 s. 1; R.L. 1905 s. 1556; G.S. 1913 s. 3175; M.S. 1927 s. 3238-6.

340.76 PHARMACISTS; ILLEGAL ACTS.

HISTORY. 1887 c. 8 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 s. 45; G.S. 1894 s. 2037; R.L. 1905 s. 1557; G.S. 1913 s. 3176; M.S. 1927 s. 3238-7.

340.77 PHYSICIANS; ILLEGAL ACTS.

HISTORY. 1887 c. 8 s. 3; M.S. 1878 Vol. 2 (1888 Supp.) c. 16 s. 46; G.S. 1894 s. 2038; R.L. 1905 s. 1558; G.S. 1913 s. 3177; M.S. 1927 s. 3238-8.

340.78 SALES TO MINORS, HABITUAL DRUNKARDS, OR PERSONS UNDER GUARDIANSHIP AFTER NOTICE.

HISTORY. 1860 c. 47 s. 1; 1861 c. 53 s. 1; G.S. 1866 c. 16 ss. 10, 13; 1877 c. 44 s. 1; G.S. 1878 c. 16 ss. 10, 13; 1887 c. 81 s. 1; G.S. 1894 ss. 1199, 2002; 1895 c. 90 s. 1; 1895 c. 91 s. 1; R.L. 1905 ss. 1534, 1559; 1907 c. 247 s. 1; 1911 c. 83; 1913 c. 538 s. 1; G.S. 1913 ss. 3148, 3178; M.S. 1927 s. 3238-9.

See annotations under section 340.73.

A person of Indian blood is one having Indian blood in his veins regardless of whether it is from his father's side or his mother's side. OAG Feb. 26, 1934.

A mayor of a city has the right in certain cases to post notices in places dispensing intoxicating liquor to prevent sale to certain persons, but 3.2 beer is not intoxicating. OAG Aug. 24, 1939 (218e).

340.79 GIVING TO, OR PROCURING FOR, MINORS.

HISTORY. 1911 c. 290 s. 1; G.S. 1913 s. 3179; M.S. 1927 s. 3238-10.

Gift of liquor to a minor is a gross misdemeanor under Laws 1911, Chapter 290, and not a felony. OAG April 10, 1933.

340.80 INDUCING MINORS TO ENTER SALOONS.

HISTORY. 1911 c. 369 s. 1; G.S. 1913 s. 3180; M.S. 1927 s. 3238-11.

340.81 EXCLUSION OF MINORS FROM PLACES WHERE LIQUOR IS SOLD AFTER NOTICE; PENALTY.

HISTORY. 1909 c. 198 s. 1; G.S. 1913 s. 3181; M.S. 1927 s. 3238-12.

340.82 SALE TO INDIANS.

HISTORY. 1849 c. 25 s. 1; R.S. 1851 c. 21 s. 1; 1854 c. 31 ss. 1, 2; P.S. 1858 c. 18 ss. 1, 6, 7; 1860 c. 47 s. 1; Ex. 1862 c. 11 s. 1; G.S. 1866 c. 16 s. 13; G.S. 1878 c. 16 s. 13; G.S. 1894 s. 2002; R.L. 1905 s. 1560; G.S. 1913 s. 3182; M.S. 1927 s. 3238-13.

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See annotations under section 340.73.

340.83 SALES TO PERSONS PAROLED FROM STATE INSTITUTIONS.

HISTORY. 1905 c. 72 s. 1; G.S. 1913 s. 3183; M.S. 1927 s. 3238-14.

340.84 KNOWLEDGE.

HISTORY. 1905 c. 72 s. 2; G.S. 1913 s. 3184; M.S. 1927 s. 3238-15.

340.85 DUTIES OF OFFICERS.

HISTORY. 1849 c. 8 s. 7; 1849 c. 25 s. 3; 1851 c. 7 s. 8; R.S. 1851 c. 20 s. 8; R.S. 1851 c. 21 s. 3; 1852 c. 8 ss. 11, 14; 1858 c. 74 s. 7; P.S. 1858 c. 18 ss. 3, 21; Ex. 1862 c. 11 s. 2; G.S. 1866 c. 16 ss. 5, 14; G.S. 1878 c. 16 s. 5; G.S. 1894 s. 1994; 1895 c. 50 s. 1; R.L. 1905 s. 1561; G.S. 1913 s. 3185; M.S. 1927 s. 3238-16.

Officers of municipal corporations organized under legislative authority are, in respect to all general laws having force and operating within their municipality, agents of the state, and may be charged with the performance of such duties in the enforcement of the same as the legislature may from time to time impose. *State ex rel v Robinson*, 101 M 277, 112 NW 269.

While the primary duty of enforcing state laws rests upon the local authorities, the liquor control commissioner may act independently of the local officials, or report a violation to the local officers and render it their positive duty to prosecute violator, but the sole duty of enforcing city ordinances is imposed on the local authorities. OAG Dec. 21, 1937 (218h-2).

The county attorney is not required to act as a police officer or detective or to institute criminal proceedings in any case unless evidence or information reasonably sufficient to justify action is brought to his attention. 1942 OAG 189, Nov. 10, 1942 (121-B-17).

340.86 NEGLECT OF DUTIES BY OFFICERS.

HISTORY. 1858 c. 74 s. 8; P.S. 1858 c. 18 s. 22; G.S. 1866 c. 16 s. 6; G.S. 1878 c. 16 s. 6; 1887 c. 6 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 s. 36; G.S. 1894 ss. 1995, 2028; R.L. 1905 s. 1562; G.S. 1913 s. 3186; M.S. 1927 s. 3238-17.

The forfeiture of office and pecuniary penalty prescribed by Revised Laws 1905, Sections 1561, 1562, for the failure of the mayor or other officer named therein to make complaint of known violations of the statutes regulating the sale of intoxicating liquor, may be enforced by the attorney general through appropriate proceedings brought for that purpose. The power conferred by the charter of St. Cloud upon the city council thereof, upon the subject of the removal of municipal officers for misconduct in office, does not exclude the power of the state, through the attorney general, to effect a removal for a violation of the statute above referred to. The power and authority of each is concurrent. Nor is the authority of the attorney general taken away or superseded by the provisions of section 1561, by which the county attorney of each county is required to prosecute violations of the statute. *State ex rel v Robinson*, 101 M 277, 112 NW 269.

340.87 DEFINITIONS.

HISTORY. 1861 c. 53 s. 1; G.S. 1866 c. 16 s. 11; 1877 c. 44 s. 2; G.S. 1878 c. 16 s. 11; 1887 c. 81 s. 2; 1889 c. 105 s. 1; G.S. 1894 s. 2000; R.L. 1905 s. 1564; G.S. 1913 s. 3188; M.S. 1927 s. 3238-18.

See annotations under section 340.07.

340.88 INTOXICATED PERSONS ON STREET CARS OR RAILWAY TRAINS.

HISTORY. 1911 c. 28; 1913 c. 417 s. 1; G.S. 1913 s. 3192; M.S. 1927 s. 3238-19.

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340.89 DRINKING ON TRAINS, STREET CARS.

HISTORY. 1911 c. 28; 1913 c. 417 s. 2; G.S. 1913 s. 3193; M.S. 1927 s. 3238-20.

340.90 PERMITTING DRINKING ON TRAINS, STREET CARS; PENALTY.

HISTORY. 1911 c. 28; 1913 c. 417 s. 3; G.S. 1913 s. 3194; M.S. 1927 s. 3238-21.

340.91 CONDUCTORS TO ARREST.

HISTORY. 1911 c. 28; 1913 c. 417 s. 4; G.S. 1913 s. 3195; M.S. 1927 s. 3238-22.

340.92 INTOXICATED PERSONS LEAVING TRAINS; DUTIES OF CONDUCTOR AND EMPLOYEES.

HISTORY. 1911 c. 28; 1913 c. 417 s. 5; G.S. 1913 s. 3196; M.S. 1927 s. 3238-23.

340.93 SEIZURE OF LIQUORS.

HISTORY. 1911 c. 28; 1913 c. 417 s. 6; G.S. 1913 s. 3197; M.S. 1927 s. 3238-24.

340.94 PROSECUTIONS AND EVIDENCE.

HISTORY. R.S. 1851 c. 21 s. 4; P.S. 1858 c. 18 s. 4; 1861 c. 53 s. 1; G.S. 1866 c. 16 s. 11; 1877 c. 44 s. 2; G.S. 1878 c. 16 s. 11; 1887 c. 81 s. 2; 1889 c. 105 s. 1; G.S. 1894 s. 2000; R.L. 1905 s. 1566; G.S. 1913 s. 3198; M.S. 1927 s. 3238-25.

1. **Jurisdiction of courts**
2. **Indictments**
3. **Complaints**
4. **Election**
5. **Proof**
6. **Variance**
7. **Evidence admissible**
8. **Sufficiency of evidence**
9. **Punishment**

1. Jurisdiction

The district court has jurisdiction to try indictments for selling liquor without a license. *State v Kobe*, 26 M 148, 1 NW 1054; *State v Bach*, 36 M 234, 30 NW 764; *State v Russell*, 69 M 499, 72 NW 832.

Justices of the peace are deprived of the power to hear and finally determine criminal cases arising under the various laws of the state regulating the sale of intoxicating liquors (if otherwise possessing jurisdiction), by the fact that a person convicted of such violation is by statute unable to procure a license for the sale of such liquors for at least 12 months thereafter. *State v Larson*, 40 M 63, 41 NW 363.

Under the statutes as now existing, a justice of the peace has no jurisdiction to hear and determine a criminal charge for selling intoxicating liquors without a license or for an attempt to evade the statute prohibiting such sales. *State ex rel v Anderson*, 47 M 270, 50 NW 226.

The municipal court of Minneapolis held to have jurisdiction of a prosecution for the violation of a city ordinance. *State v Harris*, 50 M 128, 52 NW 387; *State v Lindquist*, 77 M 540, 80 NW 701.

The provisions of Laws 1901, Chapter 252, which authorize the trial of a person charged with keeping a "blind pig" before any magistrate in the county where the offense is committed, are valid. The municipal court of Minneapolis has jurisdiction to try and determine all offenses committed within the county of Hennepin which under the general laws of the state are within the jurisdiction of a justice court. *State ex rel v Dreger*, 97 M 221, 106 NW 904.

2. Indictments

The indictment must negative a license. *State v Nerbovig*, 33 M 480, 24 NW 321.

An indictment must allege the quantity so as to show that it was less than five gallons. *State v Lavake*, 26 M 526, 6 NW 339; *State v Langdon*, 29 M 393, 13 NW 187; *State v Bach*, 36 M 234, 30 NW 764; *State v Wyman*, 42 M 182, 43 NW 1116.

The indictment must describe the liquor, but it is sufficient to describe it as an intoxicating liquor. *State v Quinlan*, 40 M 55, 41 NW 299; *State v Feldman*, 80 M 314, 83 NW 182.

It is not necessary in an indictment for selling intoxicating liquors without a license to negative the proviso. *State v Corcoran*, 70 M 12, 72 NW 732.

In an indictment it is not necessary to negative exceptions of conditions contained in the statutes. *State v Holt*, 69 M 423, 72 NW 700.

The indictment need not be certain as to the date of the sale. It is sufficient to allege that the accused "sold" the liquor. An allegation as to the place of sale "in said county of Lincoln" held sufficient. *State v Lavake*, 26 M 526, 6 NW 339.

An indictment was held sufficient against the objection that it failed to allege that the liquor was sold for consumption in the village. *State v Johnson*, 86 M 121, 90 NW 161, 1133.

An indictment held sufficient as to the place where the offense was committed. *State v Peterson*, 38 M 143, 36 NW 443.

In an indictment charging defendant with having unlawfully kept open after 11 o'clock at night their saloon, being a place wherein the sale of liquor was licensed, but containing no allegation that the place was not a hotel, the facts thus stated do not constitute a public offense and the indictment did not negative the exception. *State v Jarvis*, 67 M 10, 69 NW 474.

The indictment charges defendants with keeping open after 11 o'clock at night their licensed saloon in a certain room, in a certain building, and states that the room is not a hotel, but it does not state that the building is not a hotel. The indictment was sufficient, as it does not appear in the indictment that defendants owned or controlled the rest of the building, or carried on any business in the same, and it is not necessary that it should appear whether they did or not. *State v Russell*, 69 M 499, 72 NW 832.

An indictment for selling liquor to a minor need not allege a notice forbidding a sale. *State v Hyde*, 27 M 153, 6 NW 555.

In an indictment for selling liquor to a minor, under General Statutes 1878, Chapter 16, Section 10, it was held not necessary to allege that the accused was a person licensed to sell intoxicating liquors or engaged in any particular occupation. *State v McGinnis*, 30 M 48, 14 NW 256.

An indictment charging that defendant, on the — day of —, and divers other days and times since said day, did sell to one W. G. spirituous liquors is not double. *State v Kobe*, 26 M 148, 1 NW 1054.

3. Complaints

A complaint is sufficient when it substantially follows the language of the statute, in charging defendant with selling liquor to an habitual drunkard. *State v Heck*, 23 M 549.

A complaint concluding "contrary to the statute" as well as against the ordinance is not double. *City of Jordan v Nicolin*, 84 M 367, 87 NW 916.

It was not necessary to allege in a complaint charging the sale of one quart of malt liquor without a license that the malt liquor was intoxicating, or to plead the ordinance, or to conclude the complaint "contrary to the statute". *State v Gill*, 89 M 502, 95 NW 449; *State v Evans*, 89 M 506, 95 NW 1133.

A complaint charging a sale and disposal is not double. *State v McGinnis*, 30 M 52, 14 NW 258.

The complaint and warrant must allege the name of the person to whom the sale was made or, if that is unknown, give a description of him. *State v Schmail*, 25 M 368.

It is sufficient to allege in a complaint a sale of "intoxicating liquors" merely. *State v McGinnis*, 30 M 52, 14 NW 258.

The complaint held to sufficiently allege that a sale of intoxicating liquor was made without first having obtained a license therefor. *Village of Elbow Lake v Holt*, 69 M 349, 72 NW 564.

A complaint which charges that defendant "did wilfully, unlawfully, and wrongfully fail and omit to close and keep closed" on Sunday a saloon, without stating that he owned it, or had charge or control of it, or of the matter of opening or closing it, does not show a breach of an ordinance prescribing that every saloon shall be closed and kept closed during the whole of every Sunday. *State v Gluck*, 41 M 553, 43 NW 483.

In a prosecution for keeping a licensed saloon open after 11 o'clock at night, contrary to an ordinance, it is necessary to show that the person charged with such offense had a license for the sale of intoxicating liquors at such place. *City of Jordan v Nicolin*, 84 M 370, 87 NW 915.

A complaint, under General Statutes 1878, Chapter 16, Section 10, for selling liquor to husband after notice, must charge that the person furnishing the liquor was, at the time when the written notice forbidding him to so furnish was served upon him, a tavern keeper, merchant, distiller, or person having or keeping intoxicating liquors, etc., as the case may be. *State v Heitsch*, 29 M 134, 12 NW 353.

4. Election

The trial court did not err when it refused to compel the prosecuting attorney to elect whether he would ask for a conviction for a sale of "spirituous" or for a sale of "malt" liquors. *State v Feldman*, 80 M 314, 83 NW 182.

If an entire transaction is given in evidence, and no election is made by the state, a verdict would be a bar to any further prosecution for any offense of the same kind included in the transaction. *State v Mueller*, 38 M 497, 38 NW 691.

5. Proof

When a sale is proved, the presumption is that it was unlawful and the burden of proving a license is on the accused. *State v Schmail*, 25 M 370; *State v Bach*, 36 M 234, 30 NW 764; *State v Tisdale*, 54 M 105, 55 NW 903; *State v Ahern*, 54 M 195, 55 NW 959.

In a prosecution for keeping a licensed saloon open after eleven o'clock at night, contrary to an ordinance, it is necessary to show that the person charged with such offense had a license for the sale of intoxicating liquors at such place. *City of Jordan v Nicolin*, 84 M 370, 87 NW 915.

It is unnecessary to prove the particular kind of intoxicating liquor sold. *State v McGinnis*, 30 M 52, 14 NW 258; *State v Feldman*, 80 M 314, 83 NW 182.

Proof of the sale of what appeared to be intoxicating liquor is prima facie proof of the sale of intoxicating liquor. *State v Dick*, 47 M 375, 50 NW 362; *State v Tisdale*, 54 M 105, 55 NW 903.

6. Variance

In a prosecution under General Statutes 1866, Chapter 16, Section 11, as amended, upon a charge of furnishing "one glass of spirituous liquor, to-wit, whiskey," to C, an habitual drunkard, it is not necessary to prove that the liquor furnished was whiskey, nor that the defendant knew that C was an habitual drunkard. *State v Heck*, 23 M 549.

The allegation that the act was done on divers other days than the one specified, was unskillfully pleaded, because unnecessary; but it does not vitiate the indictment. *State v Kobe*, 26 M 148, 1 NW 1054.

An indictment charging that the defendant "on or about the 15th day of November, 1879, at the town of Lake Benton, in said county of Lincoln, did sell and dispose of, to one B. W. one pint of malt liquor, to-wit, beer, of the value of ten cents; one pint of gin, of the value of ten cents; one pint of brandy, of

the value of ten cents; one pint of whiskey, of the value of ten cents," sufficiently alleges a sale and disposal of a quantity of spirituous liquor, less than five gallons, in the county of Lincoln, in the state of Minnesota, and the time of such sale and disposal. *State v Lavake*, 26 M 526, 6 NW 339.

In respect to the name of one of the parties, and in regard to the kind of liquor sold, there was a fatal variance between the pleading and the proof. *State v Quinlan*, 40 M 55, 41 NW 299.

It would not be a fatal variance if the proof show that the sale in question was of a greater or less quantity than the amount alleged. *State v Tisdale*, 54 M 105, 55 NW 903.

The quantity of liquor sold is immaterial, if it be less than five gallons. *State v Ahern*, 54 M 195, 55 NW 959.

7. Evidence admissible

Under an indictment charging defendant with keeping open a licensed saloon on the Sabbath day, in Minneapolis, the comptroller's record of licenses, showing that the particular place was licensed in the name of "Bert Samrud" is competent evidence tending to prove that defendant was the licensee. *State v Sannerud*, 38 M 229, 36 NW 447.

Evidence may be given of the whole transaction, even if it constitutes several offenses of the same kind. *State v Mueller*, 38 M 497, 38 NW 691.

To prove a sale by defendant it is proper to prove that an order was sent by the purchaser, by telephone, to the establishment of which defendant was in charge, and that the article was accordingly sent to the purchaser. *State v Priester*, 43 M 373, 45 NW 712.

Evidence of a distinct and independent offense cannot be admitted at the trial of a defendant charged with the commission of a crime. *State v Austin*, 74 M 463, 77 NW 301.

In a prosecution for keeping open a licensed place on Sunday it was proper to show that drinks were being dispensed at the bar in such place on that day. If such evidence tended to show the commission of another crime, it was nevertheless material and competent to show that the offense charged was committed. *State v Sodini*, 84 M 444, 87 NW 1130.

Certain rulings of the court upon the admissibility of evidence, and certain statements of the court made when instructing the jury, construed and found not to constitute prejudicial error. *State v Lewis*, 86 M 174, 90 NW 318.

The intoxicating liquors and appliances usually used in the sale thereof, which were found on his premises and seized by virtue of the search warrant, were competent evidence on the trial of defendant on the charge of keeping a blind pig. *State v Stoffels*, 89 M 205, 94 NW 675.

A bottle of "Tanto", sold at a restaurant, was purchased by a police officer, who, with his assistant, tasted the contents, and were each allowed to state, after having professed knowledge of its stimulating attributes, that it was intoxicating. Held not to be error. *State v Olson*, 95 M 104, 103 NW 727.

The admission of evidence, on the trial of an indictment for selling liquor without a license, of sales by defendant to persons other than the one named in the indictment, held, in view of the facts disclosed by the record, not error, though it tended to prove the commission of other offenses. Such other sales were a part of a general scheme and plan devised by defendant to continue in the business of selling intoxicating liquor without a license and were so related to the sale charged as to render the same proper corroborative evidence. *State v Peterson*, 98 M 210, 108 NW 6.

8. Sufficiency of evidence

Evidence held sufficient to warrant a conviction for selling liquor to a minor. *State v Waterstradt*, 74 M 292, 77 NW 48; *State v Hawkins*, 96 M 140, 104 NW 898.

The defendant was convicted of the offense of selling intoxicating liquors in a village, after the people thereof had voted against issuance of license for

such sales. The evidence sustains the judgment. *State v Johnson*, 86 M 121, 90 NW 161, 1133.

The verdict that defendant was guilty of selling intoxicating liquors without a license is sustained by the evidence. *State v Story*, 87 M 5, 91 NW 26; *State v Tisdale*, 54 M 105, 55 NW 903; *State v Gill*, 89 M 502, 95 NW 449.

Witnesses testifying to the sale of "beer" at a drinking saloon where intoxicating liquors are sold, may be understood as meaning the fermented malt beer in common use as a beverage. *State v Dick*, 47 M 375, 50 NW 362.

Under a city ordinance of Minneapolis requiring saloons and places where intoxicating liquors are sold to be closed and kept closed on Sundays, the evidence held sufficient to sustain a conviction. *State v O'Connor*, 58 M 193, 59 NW 999.

On appeal from a judgment in a prosecution for selling intoxicating liquor, under the name of "Swedish Malt", without a license, the evidence is considered and held sufficient to justify the jury in finding that the article sold was in fact intoxicating liquor. *State v Schagel*, 102 M 401, 113 NW 1014.

A single sale to an habitual drunkard by a clerk of the accused held insufficient to warrant a conviction. *State v Mahoney*, 23 M 181.

In a prosecution for keeping a licensed saloon open after 11 o'clock at night, contrary to an ordinance, the evidence does not sustain the judgment convicting the defendant, for there was no competent proof that he was a licensed saloon keeper. *City of Jordan v Nicolin*, 84 M 370, 87 NW 915.

9. Punishment

Acts which are punishable under the general law may also be made punishable by ordinance and the punishment need not be the same. *State v Ludwig*, 21 M 202; *State v Harris*, 50 M 128, 52 NW 387; *City of Jordan v Nicolin*, 84 M 367, 87 NW 916.

A commitment to the county jail to await the payment of a fine held proper. *State v Peterson*, 38 M 143, 36 NW 443.

Punishments allowable under the Minneapolis charter discussed. *City of Minneapolis v Olson*, 76 M 1, 78 NW 877.

340.941 SALE BY EMPLOYEE.

HISTORY. R.L. 1905 s. 1565; G.S. 1913 s. 3191; M. Supp. s. 3138-18½.

A single sale to an habitual drunkard, made by the clerk of person authorized to sell spirituous liquors, at his place of business, made in his absence, is not sufficient to raise a presumption that the clerk was authorized by his employer to make such unlawful sale. *State v Mahoney*, 23 M 181.

A party can only be held liable criminally for a sale of liquor by his servant when made with his authority, or with his knowledge or assent. If made without his knowledge, and really in opposition to his will, and in way participated in, approved, or countenanced by him, he is not liable. *State v Mueller*, 38 M 497, 38 NW 691.

This section has no application to prosecutions for violation of a city ordinance. OAG June 10, 1939 (218j).

This section has no application to the sale of 3.2 beer. OAG July 7, 1939 (218j-12).

340.95 CIVIL ACTIONS FOR INJURIES CAUSED BY INTOXICATION.

HISTORY. 1849 c. 8 s. 1; 1855 c. 48 s. 2; 1858 c. 74 s. 2; G.S. 1866 c. 16 s. 2; 1872 c. 61 s. 2; G.S. 1878 c. 16 ss. 2, 3; 1887 c. 6 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 16 s. 34; G.S. 1894 ss. 1992, 2026; 1905 c. 246; R.L. 1905 ss. 1524, 1540; 1911 c. 175 s. 1; G.S. 1913 ss. 3117, 3155, 3200; G.S. 1923 s. 3239; M.S. 1927 s. 3239.

The bond should run to the state, and the penalties go to the county treasury. The bond may be prosecuted in the name of the state by the county attorney. If executed to a village, the county attorney cannot sue in its name, without its authority. *Village of St. James v Hingtgen*, 47 M 521, 50 NW 700.

The liquor dealers' bond, executed under the provisions of Revised Laws 1905, Section 1524, was intended by the legislature as security for an observance of and compliance with the liquor laws of the state, and for the benefit and protection of all persons injured or damaged in consequence of an unlawful sale of liquor by the licensee. *Koski v Pakkala*, 121 M 450, 141 NW 793.

Though the liquor dealers' bond, executed under the provisions of Revised Laws 1905, Section 1524, is executed to the state, injured persons may prosecute an action thereon in their own name for damages suffered by them for a violation thereof. *Koski v Pakkala*, 121 M 450, 141 NW 793.

The liquor dealers' bond, executed under Revised Laws 1905, Section 1524, constitutes a contract between the licensee and his surety on the one hand and the state and all persons injured in consequence of a violation thereof on the other; and though a breach thereof, by an unlawful sale of liquor by the licensee, necessarily constitutes a tort, the action for damages resulting from such sale is upon the contract, and not for the tort; the tort is but evidence of the breach of the contract. *Koski v Pakkala*, 121 M 450, 141 NW 793.

The cause of action for a breach of a liquor dealers' bond, executed under the provisions of Revised Laws 1905, Section 1524, survives the death of the licensee and the action may be prosecuted against his estate. *Koski v Pakkala*, 121 M 450, 141 NW 793.

An unchallenged instruction given in an action under Laws 1911, Chapter 175, for damages alleged to have been occasioned by the intoxication of the plaintiff's minor son with liquor, claimed to have been purchased at the defendant's saloon, held the law of the case, by which the sufficiency of the evidence to sustain the verdict must be gauged. *Dobrowoloske v Parpala*, 121 M 455, 141 NW 803.

To render a licensed saloon keeper liable for an illegal sale, his sale need not be the sole cause of intoxication. It is enough if it is a cooperating, or concurring or proximately contributing cause. *Fest v Olson*, 138 M 31, 163 NW 798.

General Statutes 1913, Section 3200, confers a right of action for injury to his or her means of support upon each child of a person whose death is proximately caused by the illegal sale of intoxicating liquor, whether the child is a minor or an adult. *Miles v National Surety Co.* 149 M 187, 182 NW 996.

A sale of intoxicating liquor by a saloonkeeper to an intoxicated person is an illegal act rendering him and the surety on his bond jointly and severally liable for such damages as proximately result therefrom. One entitled to maintain an action for damages so resulting does not release the surety on the bond by failing to file in the probate court a claim for such damages against the estate of a saloonkeeper who dies before the action is brought. *Miles v National Surety Co.* 149 M 187, 182 NW 996.

Action to recover for the loss to plaintiff of her means of support caused by intoxicating liquor illegally sold to her deceased husband by defendant Lampi. The evidence sustains the finding that Lampi had sold intoxicating liquor to him in violation of law, and that his death resulted from acute alcoholism. *Pete v Lampi*, 150 M 423, 185 NW 653.

The surety on a saloonkeeper's bond was liable in any and all cases of illegal sales in which his principal was liable. *Pete v Lampi*, 162 M 497, 203 NW 447.

Where illegal sales made during the period covered by a particular bond concurred with other illegal sales in causing damage, the surety on such bond was jointly and severally liable therefor to the extent of his bond. *Pete v Lampi*, 162 M 497, 203 NW 447.

The makers and sellers of moonshine, an intoxicating liquor, which when drunk may cause permanent physical or mental injury to the person drinking the same and the making or disposing of which is under all circumstances unlawful, are liable in damages under General Statutes 1923, Section 3239, to a wife for injury to her support caused by her husband's becoming so intoxicated and stupefied from three drinks of such liquor that he fell helpless in the road where he drank and there remained all night in a temperature of ten below zero, freezing both hands and seven of his toes so as to necessitate their amputation. The

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original illegal makers and sellers may be regarded as the proximate cause of the injury to the plaintiff's means of support. *Benes v Campion*, 186 M 578, 244 NW 72.

The person killed, plaintiff's intestate, had he lived, could not have recovered damages against defendant liquor seller under the provisions of section 3239, since he was not injured "in person or property, or means of support, by any intoxicated person, or by the intoxication of any person." *Sworski v Colman*, 204 M 474, 283 NW 778.

Whether contributory negligence is a defense to an action based upon the violation of a statute or ordinance depends upon considerations of policy and legislative intent; and in the instant case the party injured by the defendant's violation of a statutory prohibition may recover irrespective of his contributory intoxication. *Mayes v Byers*, 214 M 54, 7 NW(2d) 403.

Bonds deposited and accepted as legal securities with granting of off-sale liquor license cannot be released until expiration of the license period. 1942 OAG 161, June 17, 1941 (218-L).

Distinction between the governmental and the proprietary functions of a retail liquor store. Liability for acts of agents, such as bartenders. Right to purchase public liability insurance. OAG Aug. 21, 1944 (218j-10).

340.96 DRUNKENNESS; SUCCESSIVE OFFENSES; SUSPENSION OF SENTENCE.

HISTORY. 1889 c. 13 s. 1; G.S. 1894 s. 6949; R.L. 1905 s. 5161; 1907 c. 208 s. 1; G.S. 1913 s. 8964; G.S. 1923 s. 10452; M.S. 1927 s. 10452.