

POLICE REGULATIONS

CHAPTER 340

INTOXICATING LIQUORS

BEER

340.01 LICENSES FOR SALE OF NON-INTOXICATING BEVERAGES.

1. Generally
2. Issuing license
3. Refusing license
4. Revoking license
5. License fees
6. Regulations
7. Violations

1. Generally

Action to recover liquor seized by the sheriff. An action of replevin cannot be successfully maintained against a public officer who, in the course of his duty, seized the property levied upon, when such property, although owned by plaintiff, was possessed by him for an illegal purpose at the time of the seizure. *Starrett v Pedersen*, 198 M 416, 270 NW 131.

It is within the exclusive province of the legislature to declare what acts shall constitute a crime, to prohibit the same, and to impose penalties for violations thereof; and courts have jurisdiction to interfere only when there has been a clear departure from the fundamental law and the spirit and purpose thereof. *State v Ives*, 210 M 141, 297 NW 563.

Under a club license, the club is not restricted in the sale of 3.2 beer to members of the club. OAG May 16, 1947 (217-F-2).

There is no statutory provision for a search warrant to search for 3.2 beer. OAG May 17, 1947 (217-G).

Suit by purchaser of intoxicating liquors for breach of warranty of fitness for the purpose. 16 MLR 319.

2. Issuing license

License for sale of non-intoxicating malt liquor may not be granted by the county board to an applicant located in the unorganized portion of Cook county, except upon the written recommendation of the sheriff and county attorney. OAG Aug. 16, 1946 (217-B-21).

License issued by the county board becomes void when located in territory afterwards incorporated into a village. The village may license. In such case the proportionate part of the money paid for the county license should be refunded. OAG Nov. 7, 1946 (217-B-7).

License in town cannot be granted without consent of the town board. OAG Dec. 2, 1946 (217-B-8).

4. Revoking license

Where complaining party appeared pursuant to notice before the city council without objection and contested the proceeding on its merits, he could not question

the sufficiency of the notice or the form of the charges made against him. The evidence sustains the action of the city council in revoking the license. *State ex rel v City of Alexandria*, 210 M 260, 297 NW 723.

Under the provisions of defendant's charter, 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 where the licensee was duly notified of hearing before the city council to consider revocation of his licenses and was present at such hearing when motion to postpone hearing to fixed date in future was made and carried, plaintiff was not entitled to separate notice of second hearing. *Moskovitz v City of St. Paul*, 218 M 543, 16 NW(2d) 745.

An attempt to compel a restaurant owner to open for the sale of meals at 7:00 A. M. is neither a reasonable exercise of the power to regulate the sale of non-intoxicating malt beverages nor a reasonable exercise of the power to regulate restaurants under section 461.01. OAG July 9, 1946 (217-F-2).

6. Regulations

L. 1933, c. 116, authorizing cities to license and regulate the business of selling at retail non-intoxicating liquor, contains no provision for the giving of a bond by the vendors; so that, where there is a breach of the conditions of the bond, the plaintiff has no cause of action on the bond except such damages as the city can show it had suffered from a violation of the ordinance; and no damages having been alleged, the demurrer to the complaint should have been sustained. *City of St. Cloud v Willenbring*, 195 M 70, 261 NW 585.

The sale of intoxicating malt liquors is subject to regulation under the police power of the state, and L. 1933, c. 116, s. 1, delegating to municipal councils authority to license and regulate sales thereof, is a valid exercise of such power. *State v Ives*, 210 M 141, 297 NW 563.

As applied to an ordinance making it unlawful for a licensee "to suffer or permit" upon the licensed premises the "mixing or spiking of malt liquor, soft drinks," or any other beverage "by adding to or with the same any intoxicating liquor," a licensee "suffers" such an act to be done when, although possessed of power to act and duty requires action, he fails to act; the word "suffer" being construed to be synonymous with "permit," "consent," to "approve of," and "not to hinder." *State v Jamieson*, 211 M 262, 300 NW 809.

If a minor is in a rural tavern for purposes that are legal, he may remain therein a sufficient time to accomplish his purpose. The length of time is always a fact question. OAG June 5, 1945 (217-f-3).

L. 1945, c. 549, prohibits a minor from remaining in any dance hall where 3.2 beer is sold. OAG June 9, 1945 (217-f-3).

The near location of a church or school is a proper matter for consideration on the question for a 3.2 beer license. OAG July 23, 1945 (217-b-8).

Beer cannot be sold at a counter in the room where minors are attending a dance. OAG June 25, 1945.

In the application of laws relating to licensing 3.2 beer bars, the grandstand in a ball park is not deemed a room. OAG Aug. 13, 1945 (218-G-15).

The governing body of a municipality cannot divest itself of the authority conferred upon it to regulate and license the sale of 3.2 beer. A council cannot bind a succeeding council. OAG July 8, 1947 (217-c).

Validity of statute requiring permit to transport liquor through a state. 26 MLR 654.

7. Violations

It is the exclusive province of the legislature to declare what acts, deemed inimical to the public welfare, shall constitute a crime, to publish same, and to impose appropriate punishment for violation thereof. Proof of criminal intent is unnecessary where the statute makes commission of the prohibited act a punishable of-

fense. Judicial consideration is limited to inquiry whether constitutional rights of citizens are thereby violated or impaired. *State v Sobelman*, 199 M 232, 271 NW 484.

The evidence justified the conviction of the defendants, the licensed owners of a beer parlor in the city of St. Paul, for wrongfully and unlawfully failing to keep closed for business said beer parlor at 3:15 A. M. Sunday, February 21, 1937, as required by city ordinance No. 7641. *City of St. Paul v St. Aubin*, 201 M 208, 275 NW 623.

Defendant, who operates a small grocery store, is permitted by his license to sell beer in bottles for consumption off the premises. He was found guilty of selling beer to his patrons who drank it on the premises. The appellate court found the evidence insufficient for conviction and decreed a reversal. *State v Oelschlager*, 212 M 485, 4 NW(2d) 102.

340.02 UNLAWFUL TO SELL UNLESS LICENSED.

See, *City of St. Cloud v Willenbring*, 195 M 70, 261 NW 585, noted under section 340.01 (6).

Where there have been continual and persistent violations of the liquor statutes and repeated convictions have failed to abate them, an injunction is properly granted. The district 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 100, 13 NW(2d) 774; *State v Sportmen's Country Club*, 214 M 151, 7 NW(2d) 195.

If a manufacturer sells malt liquor to an unlicensed dealer in a municipality, the law is violated and the offender is guilty of a misdemeanor, section 340.05. 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 both owner and driver may be prosecuted. 1942 OAG 170, Oct. 1, 1941 (217-H).

Beer may be legally sold at the exclusive on sale liquor store owned and operated by the village of McGrath, and it is not necessary for the village council to issue to it a license for the sale of 3.2 beer in such store. 1944 OAG 199, Jan. 20, 1944 (218-J-10).

A non-intoxicating malt liquor license may be granted to any bona fide club. OAG April 19, 1945 (217-B-5).

An on sale malt liquor license cannot be granted to grocery stores. OAG May 29, 1945 (217-b-5).

Licensing authorities must determine as a question of fact whether or not a license may be granted to a place of business where three-fourths of the business is of confectionery, soft drinks, and tobacco, and one-fourth cash sales at the filling station. OAG June 9, 1945 (217-b-5).

Under this section an incorporated baseball association is deemed a "bona fide club." OAG Aug. 13, 1945 (218-G-15).

A village may adopt an ordinance restricting the issuance of club licenses to clubs which are incorporated. OAG Aug. 19, 1946 (217-F-2).

A village ordinance that requires an applicant to pay \$400 a year for a license which would permit a holder to sell 3.2 beer and other soft drinks, food, and would permit dancing upon the premises, is properly unauthorized. It would appear to be so large as to be for revenue instead of covering the cost of regulation, and it further appears to be discriminatory. It is hard to see where the facts would warrant so large a license fee. An ordinance which requires a person to pay as large a license fee for the operation of one business as for the operation of that business and three others combined is unreasonable and discriminatory. OAG March 6, 1947 (217-B-5).

The words "in original package" must be given effect. The holder of an off sale license cannot sell draft beer placed in containers brought in by customers. OAG April 29, 1947 (217-D).

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Whether an establishment is entitled to an "on-sale" beer license is a question of fact for the council; but it is quite clear that a store, the principal business of which is to sell groceries, could not qualify. OAG June 26, 1947 (217-B-5).

340.021 CLOSING HOURS FOR SALE OF NON-INTOXICATING LIQUORS.

See, *City of St. Paul v St. Aubin*, noted under section 340.01 (7).

An exclusive liquor store having a non-intoxicating malt liquor license, may sell non-intoxicating malt liquor on Sunday during the hours permitted by section 340.021. OAG April 22, 1946 (218-J-10).

A village council may shorten the hours prescribed by section 340.021. OAG July 9, 1946 (217-F-2).

340.022 MUNICIPALITIES MAY NOT EXTEND CLOSING HOURS.

The village council may restrict days and hours of sale of non-intoxicating malt liquors and may direct the times at which a municipal store shall be kept open subject to the limits of the state law. OAG May 7, 1947 (217-FO 218-J-10).

340.023 VIOLATIONS.

No criminal offense is involved in the act of "spiking" beer or soft drinks with hard liquor; but permitting such practice on the part of a licensee has, under certain circumstances, been held to be ground for revocation of license. (*State v City of Alexandria*, 210 M 260.) A village may adopt an ordinance prohibiting "spiking," in which case a conviction might involve loss of license. OAG Nov. 13, 1946 (217).

340.025 LICENSES FOR SALE OF MALT AND INTOXICATING LIQUOR.

Minnesota statute making the holder of a retail liquor dealer's federal license special tax stamp for the sale of intoxicating liquor, who has no equivalent license from the state, ineligible to have or retain a state license to sell non-intoxicating malt liquor, does not conflict with pertinent federal taxing statute, and does not burden power of the United States to tax, in violation of the Constitution. *Jung v City of Winona*, 71 F. Supp. 558.

Beer may be sold at exclusive on sale liquor store owned and operated by a village, and village council need not issue a license for sale of 3.2 per cent beer in the store. OAG Jan. 20, 1944 (217-F).

If licensee has been issued a federal liquor dealer's special tax stamp, his non-intoxicating malt liquor license must be revoked, and surrender of the special tax stamp, or the seizure of it by the sheriff is immaterial. OAG May 18, 1944 (217-B-9).

Where the federal liquor stamps have been issued to the wife, and the 3.2 beer license is issued to the husband, the right of the license issuing officer to cancel the beer license is based upon a question of fact. If the federal special stamps were purchased with the husband's money, and the wife can be construed to be the agent of the husband, probably the beer license may be canceled. OAG March 27, 1947 (217-B-9).

Power to revoke a license for the sale of beer rests with the municipal council if the licensee is convicted of violating the intoxicating liquor law; but revocation is mandatory if the licensee holds a federal retail dealer's special tax stamp. OAG July 22, 1947 (217-B-9).

340.03 UNLAWFUL TO SELL TO MINORS.

The governing body of a municipality in regulation of the business of selling liquor, may adopt reasonable rules and regulations relating to the manner of service by a vendor of non-intoxicating malt beverages. OAG July 21, 1943 (62-A).

340.04 DURATION OF LICENSES.

The statute indicates the legislative intent to issue licenses for a period of one year. All license fees are fixed on that basis, 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 (218-9).

A non-intoxicating malt beverage license is not transferable. The transferee must apply for a new license. OAG Nov. 13, 1947 (217-B-6).

340.05 PENALTY.

See, *State v Sportsmen's Club*, 214 M 151, 7 NW(2d) 195, and *State v Preuss*, 217 M 100, 13 NW(2d) 774, noted under section 340.02.

340.06 NON-INTOXICATING MALT LIQUORS EXCLUDED.

The law prohibiting sale of beer to minors does not apply to malt beverages containing less than one-half of one per cent of alcohol by volume. OAG April 9, 1947 (217-F-3).

LIQUOR CONTROL

340.07 LIQUOR CONTROL; CONSTRUCTION OF TERMS.

Subd. 5, amended by L. 1947 c. 342 s. 1.

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

2. Intoxicating liquors

Courts take notice of the fact that whiskey is an intoxicating liquor. *State v Lewis*, 86 M 174, 90 NW 318; *State v LaDue*, 164 M 499, 205 NW450; *State v Tworuk*, 172 M 130, 214 NW 778; *State v Russell*, 209 M 488, 296 NW 575.

Under the old law (suspended during prohibition era) the sale of intoxicating liquor to a minor was a gross misdemeanor, but by a new law, Ex. 1934, c. 46, s. 13, the offense was made a misdemeanor. L. 1939, cc. 101 and 248, cannot be reconciled and under the rule in section 645.33 the latest law must be given effect, and the offense must be classed as a misdemeanor. 1942 OAG 171, Feb. 6, 1942 (218-J-12).

5. On sale

The council must determine whether the facts exist under which to qualify; and must then exercise its discretion as to the admissibility of issuing the license. The issuance of such license cannot be compelled. OAG Nov. 12, 1946 (218-G-15).

On sale 3.2 beer licenses may be issued to the proprietor of an on sale exclusive liquor store. OAG June 10, 1947 (217-B-5).

9. Hotel

No rule having been promulgated, the commissioner must determine on an application for a license. Whether or not the fact that the store is connected by door

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or window with a hotel offends against the definition of "exclusive liquor store." OAG June 24, 1946 (218-G-5).

10. Exclusive liquor store

Village municipal liquor store may not present a gift in the form of a bonus to an employee. OAG Dec. 26, 1944 (218r).

If cash is on hand, a municipal liquor store may be acquired by purchase on installation without holding an election or asking for bids; but it is otherwise in case a bond issue is necessary. OAG Feb. 6, 1945 (218r).

Licenses cannot be granted to others in those municipalities where the municipality operates a liquor store. OAG Oct. 14, 1945 (218-G-13).

The county vote being favorable, a municipality may establish an on sale and likewise an off sale store. The establishment of the store is within the discretion of the municipal council. OAG Nov. 23, 1945 (218-G-13).

Meals and lunches may not be served on Sunday or at any other time in the room in which is conducted a small village exclusive liquor store. OAG Dec. 21, 1945 (218-J-10).

12. Club

Incorporated post of Veterans of Foreign Wars may obtain a club license under statutory conditions. OAG Nov. 5, 1946 (218-E-15).

A club, in order to obtain a liquor license, must have been in existence for twenty years. The fact that it is affiliated with an organization in existence twenty years is not sufficient. OAG June 9, 1947 (218-G-15).

Clubs holding license to sell liquor are subject to the regulatory provisions of section 340.14 and similar sections. It is unlawful to sell to minors, on Sunday, between the hours of midnight and 8:00 A. M. on any day, or before three o'clock P. M. on Memorial Day, or before 8:00 P. M. on election day. OAG June 11, 1947 (218-J-1).

340.08 LIQUOR CONTROL COMMISSIONER.

The liquor control commissioner has no powers or duties relating to the granting of an on-sale license by a village to a club. OAG May 12, 1945 (218-H-4).

It is not within the powers and duties of a liquor control commissioner to judicially determine the validity of an on-sale retail intoxicating liquor license. OAG July 16, 1945 (218-H-4).

There is no statute prohibiting the publication of a list of off sale dealers in aid of a plan for the sale of liquor by such dealers upon orders from another city. OAG May 1, 1947 (218-j).

340.09 OFFICE ASSISTANTS.

City or village with a population of less than 1,000 may issue off sale licenses to drug stores. OAG May 2, 1945 (218-G-5).

340.11 LICENSES.

Subd. 10, amended by L. 1947 c. 223 s. 1.

Subd. 12, amended by L. 1947 c. 528 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

Evidence required for liquor convictions. *State v Kaasa*, 198 M 181, 269 NW 365; *State ex rel v Parks*, 199 M 622, 273 NW 233; *State v Russell*, 209 M 488, 296 NW 575; *State v Ives*, 210 M 141, 297 NW 563; *State v Jamieson*, 211 M 262, 300 NW 809; *State v Hope*, 212 M 319, 3 NW(2d) 499; *State v Davis*, 212 M 608, 3 NW(2d) 677; *State v Ronnenberg*, 214 M 272, 7 NW(2d) 769; *State v McBride*, 215 M 123, 9 NW(2d) 416; *State v Capito*, 215 M 329, 9 NW(2d) 734; *State v Mueller*, 218 M 450, 16 NW(2d) 777.

An ordinance providing that the judge of the municipal court of the city shall hear and dispose of cases involving violation of the city ordinance in a summary manner, means without a jury trial. And the fact that at the time the ordinance was passed there existed a statute covering the same subject matter as the ordinance and that persons charged with violating the statute were entitled to a jury trial does not affect the result. The offense is petty and the nature of the punishment is not of such nature as to entitle a violator to a jury trial. *State ex rel v Parks*, 199 M 622, 273 NW 233; *State v Hope*, 212 M 319, 3 NW(2d) 499.

Questions arising which must be considered by a jury. *State v Ronnenberg*, 214 M 272, 7 NW(2d) 769.

Where there is an over issue of licenses, the commissioner has no power to determine which is invalid. OAG July 16, 1945 (218-h-4).

A city of the third class cannot operate a municipal liquor store. OAG Sept. 13, 1945 (218-G-13).

The council is not compelled to approve the transfer of a license to a different building in a new location. OAG Jan. 16, 1947 (218-G-10).

A municipal liquor store should not undertake to fill physicians' prescriptions. OAG Feb. 4, 1947 (218-J-11).

Club licenses permitting the sale of intoxicating liquors confines the sale to members of the particular corporation holding the license, and the words "to members only" do not include members of another chapter or post of the same national organization, but a member may buy liquor and give same to his guest. OAG May 14, 1947 (218-G-15).

As a municipal liquor store does not require a license, the provisions of section 340.11, subd. 15, do not apply to a newly organized village, and in case of an application for a municipal liquor store in a newly organized village, the two year waiting period is not required. OAG May 24, 1947 (218-G-13).

A person may store his own bottle of liquor in a club. Qualification for club and various other licenses in the city of Shakopee, defined. OAG Aug. 2, 1947 (218-G-15).

Clubs which measure up to all statutory requirements may be licensed in a city operating a municipal store, and may also issue club licenses in which private stores are licensed. OAG Aug. 6, 1947 (218-B-15).

Validity of statute requiring permit to transport liquor through a state. 26 MLR 654.

2. When required

Evidence sufficient to sustain defendant's conviction of having in his possession intoxicating liquor for sale without a license. *State v Mueller*, 218 M 450, 16 NW(2d) 277.

3. Powers of municipalities to license

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; and in the instant case he did not abuse his discretion. *State ex rel v Arundel*, 200 M 306, 273 NW 817.

Since it was within the power of the city council to enact the ordinance in question, it was for it to declare what acts it deemed inimical to the public welfare and prescribe terms of punishment for its violation. Courts interfere in cases of this type only when there has been a clear departure from the fundamental law. *State v Hope*, 212 M 319, 3 NW(2d) 499.

Charter provision authorizing the city council "to revoke for the conduct of a licensee and license granted" is self-executing. The general power of the city council to revoke a liquor license under the quoted provision of the charter cannot be restricted by an ordinance limiting the power to revoke to violations of a liquor ordinance and state liquor control act. *Moskovitz v City of St. Paul*, 218 M 544, 16 NW(2d) 745.

Possessed of specific authority under its charter to enact legislation regulating the sale of intoxicating liquor, the city of Duluth has the further power under its broad charter to pass an ordinance providing for the forfeiture of intoxicating liquor in possession for the purposes of sale, contrary to the ordinance. Conviction under the ordinance was a valid basis for an order of forfeiture thereunder, even though the search warrant was obtained under state laws. *City of Duluth v Cerveney*, 218 M 511, 16 NW(2d) 779.

The village council has control over the cancelation of a liquor license, and a suggestion or demand by the liquor control commissioner is advisory only. OAG Nov. 2, 1945, (218-G-15).

A veterans' organization having leased a town hall from the town board, cannot legally sell liquor except by license obtained from the village in which the hall is situated. OAG Nov. 29, 1945 (218-G-9).

In establishing village liquor store merchandise may be purchased under agreement to pay out of proceeds as the liquor is sold. OAG Feb. 2, 1946 (218-R).

Bids need not be called for when a village purchases a location for a municipal liquor store. OAG Feb. 21, 1946 (218-R).

A municipality having a municipal store may grant a club license. Whether or not the statutory conditions are complied with is a question of fact. OAG Nov. 29, 1946 (218-G-15).

5. To whom issued

The issuance of a license is a matter calling for the exercise of judgment and discretion on the part of the council. Their discretion cannot be controlled or reviewed, nor can the mayor or the court dictate as to the manner or the fulness of their investigation. The character, record, and fitness of the applicant for a license are matters for the council to pass upon. *State ex rel v Reiter*, 140 M 491, 168 NW 714.

The American Legion Post No. 109, Two Harbors, is a bona fide club in existence for more than 20 years. It is incorporated. The council in its discretion may grant a liquor license. 1944 OAG 195, March 22, 1944 (218-G-15).

A club license cannot issue in a dry county which under sections 340.25, 340.26 has voted to permit the establishment of a municipal liquor store. OAG June 11, 1946 (218-G-15).

Intoxicating liquor licenses cannot be issued for any place outside a city, village or the borough of Belle Plaine. OAG July 22, 1946 (218-G-1).

Except in certain counties, the question whether or not a municipal liquor store be established rests in the discretion of the village council. A vote of the electorate of the village is not required. OAG Nov. 13, 1946 (218-G-13).

In order to sell intoxicating liquor the club must have a license. No license may be granted in a dry county. Sale may be made to members only. A member may keep liquor in his private locker but not for sale. OAG Nov. 29, 1946 (218-G-15).

A club, in order to obtain a liquor license, must have been in existence for twenty years. The fact that it is affiliated with an organization in existence twenty years is not sufficient. OAG June 9, 1947 (218-G-15).

From and after July 1, 1947, no license to manufacture or sell wines at wholesale may be issued to any person or corporation licensed under clauses (a) and (b) of section 340.11, subd. 12, but, as the amendment inserted in clause (c) makes no provision for the cancelation or modification of manufacturers or wholesalers unexpired license issued prior to July 1, 1947, such licenses and the right of the licensee thereunder will continue in effect until its expiration. OAG June 12, 1947 (218-G-4).

A member of the city council may not legally accept a grant to operate or be licensed to operate an off sale hard liquor establishment. OAG June 16, 1947 (90-E-4).

6. Limitation of number

In determining the number of licenses issued by a village, a license issued to a club which sells to members only is not counted, but must be counted in case the club law is not strictly complied with. OAG Jan. 20, 1945 (218-g-15).

A city of the fourth class is prohibited from issuing more than five on sale licenses. OAG Oct. 17, 1945 (218-G-6).

7. On-sale and off-sale

If the city of Moorhead can comply with the conditions of section 340.11, subd. 7, as amended by L. 1945, c. 8, twelve on-sale stores may be licensed. OAG July 30, 1946 (218-G-6).

The granting of an on sale license for sale of intoxicating liquor is within the power of the "governing body" of a village. This includes the council, a commission, or the entire electorate if a referendum be held. Should the ordinance carry at the election the granting of the license is mandatory. A bond issue must be implemented under section 475.14. OAG March 27, 1947 (218-G-13).

A village may issue an on sale license to a club as defined in section 340.07, subd. 7, even though there is in the village a duly licensed municipal liquor store. OAG April 14, 1947 (218-G-15).

No laws have been enacted to disturb the practice of the city council of International Falls of granting on sale licenses under this section. If the practice was legal during the last ten years, it is legal now. OAG May 5, 1947 (218-G-6).

The number of on sale licenses in a village is governed within population bounds. The last federal census is controlling. The council may not take into consideration the growth in population since that census. If the council has improvidentially licensed too many on sale places, it is the problem of the council to vacate licenses over the legal number. OAG June 6, 1947 (218-G-6).

A licensee holding both an on-sale and off-sale license may transfer his operation from one building to another. The bondsmen must consent to the transfer. In the new location the store must be operated as an exclusive liquor store. OAG Aug. 27, 1947 (218-G-10).

8. Manufacturers and wholesalers

The law does not prevent stockholders of a corporation which did not receive a license under the "grandfather clause" from selling this stock to anyone, resident or non-resident; but in order to remain qualified for a wholesaler's license, the corporation must comply with the requirements of section 340.11, subd. 1. OAG Nov. 14, 1946 (218-G-12).

9. Exclusive liquor stores

Village council is not required to issue a new license when a present license expires, but may thereupon commence operating a municipal liquor store. If the village is in a wet county, a vote of the electorate is not required. OAG June 23, 1947 (218-G-13).

11. Fees

Where a license is issued for part of a year, the charge is prorated. OAG April 5, 1945 (218-G-6).

A fee of \$250 imposed upon licensees who have been found guilty of one offense, as compared to the regular \$35.00 license fee is an abuse of discretion and denotes an arbitrary and unreasonable classification. OAG Dec. 5, 1945 (217-E).

340.111 ADDITIONAL "ON SALE" LICENSES IN CERTAIN CITIES.

Municipality is under no necessity of buying stock of "on sale" dealer whose license is not renewed. OAG Dec. 23, 1946 (218-R).

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

Where a person purchasing a liquor business and taking over on July 1, applied for a new license and paid the pro rata fee, when he might have applied for a transfer of the predecessor's license, the city council who had power to grant a transfer, has also power to grant a refundment of the amount improvidently paid by the licensee. OAG Oct. 12, 1945 (218-G-10).

340.12 APPLICATION FOR LICENSE.

Recovery on bond by intoxicant or his representative in case of injury or death caused by sale to him while in intoxicated condition. *Sevorski v Coleman*, 208 M 43, 293 NW 297.

False statement or information in a verified petition constitutes perjury. OAG April 16, 1943 (328-B); OAG April 26, 1945 (218-G).

The words "bond" and "liability insurance policy" as used in L. 1943, c. 568, are in effect interchangeable. The licensee must insure the performance of the conditions on which he receives the license whether by bond or policy. (L. 1945 c. 313). OAG May 25, 1943 (218-L).

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.

Where licensee appeared pursuant to notice before the city council without objection and proceedings were had on the merits, he could not question the sufficiency of the notice or the form of the charges against him; and in review by certiorari the record to be considered by the appellate court is that made and certified by the tribunal whose proceedings are under review. *State ex rel v City of Alexandria*, 210 M 260, 297 NW 723.

A person must not hold more than one liquor license in any municipality. OAG April 26, 1945 (218-G).

A village may contract with a bartender of its municipal liquor store for employment therein covering a three year period; and the employee cannot be discharged except for cause. OAG May 7, 1945 (218-R).

Separate corporations may hold separate licenses even if a person is a stockholder in each; but not if some person or group controls both. OAG Sept. 21, 1945 (218-G-10).

Section 340.11, subd. 4, and section 340.13, place the power of revocation in the governing body of a political subdivision or in the liquor control commissioner,

and superseded the provisions of a city council placing the power of revocation in the mayor. OAG Oct. 11, 1945 (218-G-14).

Two dining rooms on different floor levels and connected by an open stairway may or may not be contained in "compact and contiguous space." It is a fact question. OAG Oct. 29, 1945.

The city council has the exclusive right to revoke licenses. That power cannot be delegated. OAG Oct. 31, 1945 (217-B-9).

The village council controls the issuance and cancelation of a license. A suggestion or demand by the state liquor commissioner is not mandatory. OAG Nov. 2, 1945 (218-G-14).

Existing licenses are not terminated by the adoption of an ordinance creating a municipal liquor store, and licensee may continue until the term of the license expires. OAG Jan. 23, 1946 (218-G-13); OAG Jan. 30, 1946 (218-G-13).

An hotel licensee of a bar may serve dining room patrons if the bar and dining room are included factually in a "compact and contiguous space." OAG July 30, 1946 (218-G-6).

Current "rumors" that a licensee of wholesaler's license is disqualified is proper basis on which the liquor control commissioner may hold a hearing. OAG Nov. 14, 1946 (218-G-12).

An on sale license may be granted to a person convicted of a felony, and has received a full pardon. A full pardon releases the punishment and in legal contemplation obliterates the offense itself. OAG March 27, 1947 (218-G-6).

340.14 REGULATIONS.

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

1. Hours of sale

Evidence is sufficient to convict defendant of selling during prohibited hours. Not being a criminal proceeding proof of guilt beyond a reasonable doubt is not required. *City of St. Paul v Keeley*, 194 M 386, 260 NW 357.

Prosecution for selling on Sunday as against the provisions of the ordinance, did not require a charge or proof of lack of license. *State v Wilson*, 212 M 380, 3 NW(2d) 677.

No matter at what hour the polls close, liquor stores must remain closed until after eight p.m. on village election day. OAG Dec. 8, 1944 (218-j-4).

Time restrictions on sale of liquor by a club licensed by a village are the statutory restrictions applicable to all dealers. OAG May 12, 1945 (218-G-5).

As to hours, a village ordinance may exceed the state law in strictness. OAG Nov. 14, 1945 (218-G-5).

If town and village are in same election district, the liquor sale closing hours must be observed. This is probably true even if the town and village are separate election districts. OAG Feb. 4, 1947 (218-J-4).

The municipal liquor store in a village wherein town election is held may not keep open on the day of the town election. OAG March 3, 1947 (218-J-4).

Clubs holding license to sell liquor are subject to the regulatory provisions of section 340.14 and similar sections. It is unlawful to sell to minors, on Sunday, between the hours of midnight and 8:00 A. M. on any day, or before three o'clock P. M. on Memorial Day, or before 8:00 P. M. on election day. OAG June 11, 1947 (218-J-1).

2. Persons to whom sale prohibited

Within the scope of employers duties or employment, a tavern keeper is responsible for the acts of his servant when charged with contributing to the delinquency of a minor child. *State v Sobelman*, 199 M 232, 271 NW 484.

Under the testimony in the case, it was for the jury to determine whether defendant "on sale" liquor company sold or furnished liquor to "one obviously intoxicated" within the terms of the ordinance. Defendant company as operator of the "on sale" place was required to use reasonable care to protect its patrons from injury at the hands of vicious persons whom it knowingly permitted about the premises. *Windsorski v Doyle*, 219 M 402, 18 NW(2d) 142.

Procedure outlined for the revocation of a license where an employee sells liquor to a minor. OAG Sept. 23, 1944 (218g-14).

Wife's action at common law for loss of consortium resulting from sale of liquor to husband. 25 MLR 113.

3. Places where not sold

Responsibility of owner or manager for sales by employees. *State v Sobelman*, 199 M 232, 271 NW 484; *State v McBride*, 215 M 123, 9 NW(2d) 416.

Although equity will not enjoin the commission of a crime as such, equity will impose its authority notwithstanding the conduct amounts to a crime. *State v Sportsmen's Club*, 214 M 155, 7 NW(2d) 495.

A house where liquor is illegally sold in small quantities to persons resorting thereto for the purpose of drinking it on the premises is a tipping house within the meaning of a Minneapolis ordinance. *State v Wilson*, 221 M 224, 21 NW(2d) 521.

The fact there is a door from an off sale liquor store into a hotel lobby does not prevent issuance of a license. OAG April 6, 1945 (218-G-5).

340.16 LICENSES NOT TO ISSUE IN PLACES VOTING AGAINST EIGHT-EENTH AMENDMENT; LOCAL REGULATIONS.

There must be a vote taken in order to establish a municipal liquor store in a municipality in Otter Tail or Norman counties. In other counties such establishment rests in the discretion of the municipal council. OAG Nov. 6, 1944 (218g-13).

The manager of a municipal liquor store may be paid his audited expense account in addition to his salary, but he cannot be given an expense account allowing him to use the funds at his discretion. OAG Sept. 18, 1945 (218-R).

No statutory authority exists authorizing a county to issue a license for sale of intoxicating liquor, or authorize establishment of municipal liquor store. OAG July 3, 1946 (218-G-13).

Municipal liquor store may not be licensed to operate from a place outside the municipality corporate limits. OAG July 3, 1946 (218-G-13).

340.161 MUNICIPAL LIQUOR STORE.

A municipal liquor store may be established by the municipal council by resolution rather than by an ordinance. When established ordinances setting forth the rules and regulations controlling the operation of the store may be passed. OAG May 24, 1946 (218-G-13).

The legality of the purchase of land in a wet county for a liquor store by a village in an adjoining dry county which does not possess the power to establish a municipal liquor store in the dry county has not been passed upon by the courts. The opinion of the attorney general dated March 2, 1940 (218g-13) that the village may purchase property which could then be annexed to the dry village and a liquor store established thereon as long as the annexed land was in a wet county, is not reversed. OAG May 24, 1946 (434-a-1); OAG May 27, 1946 (218-G-13).

The city of Windom has no power to operate a municipal liquor store outside of its corporate limits. OAG July 3, 1946 (218-G-13).

In building an authorized building for use as a municipal liquor store the village may build larger than its present needs if in good faith the council believes that the excess space will be needed for municipal purposes within a reasonable time, but if the additional space is built merely for the purpose of deriving a revenue

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for the village the action of the village would be irregular. OAG July 24, 1946 (429-a-12).

A city of the third class may not establish a municipal liquor store even after the county votes wet in a county-wide election. OAG July 25, 1946 (218-G-13).

The village council has no power to create a commission, or authorize any existing commission to manage a municipal liquor store. OAG Dec. 5, 1946 (218-R).

Manager or employee may not be paid a percentage of profits in lieu of salary. OAG Dec. 16, 1946 (218-R).

A village has the powers of a municipal corporation at common law, and may "do all other acts as natural persons may." It may enter into a contract with a supplier of liquor whereby the vendor would furnish the liquor and look solely to the receipts of the liquor store for payment. OAG Feb. 17, 1947 (218-L).

The manager of a municipal liquor store may not be paid, in whole or in part, a percentage of the profits. OAG March 10, 1947 (218-R).

Funds for the purchase of building, fixtures, and stock of liquor may be provided by the issue of warrants payable solely out of the profits of the municipal liquor store. OAG March 4, 1947 (218-R).

A municipality has power to issue revenue warrants payable solely from the profits of a municipal liquor store. Section 275.27 is not applicable, because the obligation is payable solely out of the profits of the store. OAG March 28, 1947 (218-R).

The power to establish a municipal liquor store in a village rests with the village council. The council may, without an election, establish a municipal store if it sees fit. In order to establish the store, revenue warrants may be issued payable solely out of the net profits of the store. OAG May 19, 1947 (218-G-13).

The village council may establish a municipal liquor store if the village is in a county permitting license for the sale of liquor, and if at the last local election (as distinguished from a county option election) the vote in the village permitted license. OAG June 6, 1947 (218-G-13).

The profits of a municipal liquor store may be transferred to the general revenue fund and used for any authorized city purpose. OAG June 12, 1947 (218-R).

Village council is not required to issue a new license when a present license expires, but may thereupon commence operating a municipal liquor store. If the village is in a wet county, a vote of the electorate is not required. OAG June 23, 1947 (218-G-13).

A city may borrow from unencumbered funds to pay the expense of installing a liquor store. OAG June 26, 1947 (218-R).

A municipal liquor store may sell both "on-sale" and "off-sale." OAG July 7, 1947 (218-c-2).

A city may borrow from the general fund, water fund, sewer and water operations fund, for the purpose of paying the initial costs of establishing a municipal liquor store. OAG July 10, 1947 (218-R).

340.162 NON-PROFIT HOSPITAL SUPPORTED BY MUNICIPAL LIQUOR STORE PROFITS.

HISTORY. 1947 c. 321 s. 1.

340.163 LIMITATIONS.

HISTORY. 1947 c. 321 s. 2.

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

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. Re Removal of Mesenbrink as Sheriff, 211 M 117, 300 NW 398.

340.20 LOCAL OPTION ELECTIONS IN VILLAGES.

Where at a local option election the county votes dry, a municipality within the county may not establish a municipal liquor store. OAG Oct. 8, 1945 (218-G-13).

Under the provisions of sections 340.20 and 340.21 interested citizens may cause an election to be held, where both the county and the municipality had voted wet. OAG Oct. 4, 1946 (218-G-13).

If a village votes for a license, it remains a wet village until at a subsequent election the majority of the votes are against licenses. OAG Dec. 11, 1946 (218-c-3).

340.21 RESULT OF ELECTION.

Where after a favorable wet election a municipal liquor store is established, and at the next election the result was dry, the municipal store may continue to operate only until the year of its term is completed. OAG Oct. 16, 1926 (218-G-1-B).

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

In a petition for an election on the question of establishing a municipally owned liquor store, all provisions of sections 340.16, 340.161, 340.22, and 340.23 must be followed. OAG Sept. 13, 1946 (218-G-13).

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

Where by election, the establishment of a municipal liquor store is authorized the type of store is in the discretion of the municipal council. OAG Sept. 13, 1946 (218-G-13).

An election in a city of the fourth class authorizing issue of liquor licenses is a determination of policy leaving to the city council only the question whether to operate a municipal liquor store or whether an individual application for a license should be granted. OAG May 1, 1947 (218-G-13).

340.25 LOCAL OPTION ELECTIONS IN COUNTIES; PETITION.

Before municipal liquor store may be established in a dry county, or licenses to sell liquor granted, an affirmative vote of the electors in the county is required. 1942 OAG 175, Oct. 28, 1941 (218-G-13); OAG Nov. 23, 1945 (218-G-13); OAG Dec. 20, 1945 (218-G-13).

Section 340.25 as amended by L. 1945, c. 305, contains two separate questions designated as (1) and (2). These questions may be separately submitted and need not both be submitted at the same general election. Care should be taken to protect against the true limitation set forth in section 340.26. OAG June 24, 1946 (218-C-2).

Duties of county auditor and general procedure under this section. OAG Aug. 3, 1946 (218-C-2).

In county-wide elections relating to allowance of municipal liquor stores and as modified by L. 1945, c. 305, absent voters may vote by mail. OAG Aug. 13, 1946 (218-C-2).

Where separate petitions are presented, the failure to fasten the petitions together is not fatal to the validity of the proceedings. OAG April 25, 1947 (218-C-1).

Corrupt practices act, Chapter 211, applies to county-wide elections under section 340.25. OAG June 6, 1947 (627-B-3).

A county dry because in 1933 it voted for delegates against repeal, may under Section 340.25 hold a county-wide, county option election. OAG July 7, 1947 (218-c-2).

340.26 SPECIAL ELECTION.

The right of a person to vote at an election held under section 340.26 is determined by section 340.31 and not by section 201.01. OAG Aug. 8, 1946 (218-C-2).

340.30 BALLOTS.

In preparation for a county option election, the county auditor may send out instructions to election districts, and quote the law. OAG April 18, 1946 (218-C-2).

340.31 LAWS APPLICABLE; OATH TO VOTERS.

Section 340.31 and not section 201.01 determines the right of a person to vote at a special election authorized by section 340.26. OAG Aug. 13, 1946 (218-C-2).

340.38 ARREST OF VIOLATORS; COMPLAINTS AND PROSECUTIONS.

Criminal intent in prosecution for transportation of intoxicating liquor. 9 MLR 289.

340.39 STATUTES AND ORDINANCES OPERATIVE EXCEPT AS HEREIN PROVIDED.

Power of municipal councils to declare acts inimical to public welfare and prescribe terms of punishment for violation of the ordinance. State v Jamieson, 211 M 262, 300 NW 809; State v Hope, 212 M 319, 3 NW(2d) 499.

340.402 LICENSES; FEES.

Licensing of manufacturers and wholesalers of strong beer, in accordance with L. 1943, c. 460, is governed by the provisions of sections 340.401 to 340.407. OAG July 29, 1947 (218-G-4).

EXCISE TAX**340.47 EXCISE TAX.**

Subd. 1, amended by L. 1947 c. 601 s. 1.

As provided in L. 1947, c. 601, s. 2, the application of the 30 per cent allotment is to taxes laid under section 340.47 and applies only to intoxicating liquors. Label certification is not included. Proceeds of stamps sold prior to July 1, 1947, to be affixed to containers for sale after July 1, 1947, are within the allocation requirements. Where merchants have in stock merchandise stamped at one dollar a gallon, and after July 1, 1947, an additional one dollar and fifty cents in stamps are attached, only the new tax money is set aside in a special fund under the 1947 act. OAG June 20, 1947 (218-N).

340.49 STAMPS.

Under power conferred by section 6.22 the commissioner may direct how liquor stamps may be affixed and canceled. OAG Sept. 5, 1946 (218-K).

340.54 UNSTAMPED LIQUOR CONFISCATED.

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

340.60 LIQUOR RECEIPTS PAID INTO STATE TREASURY.

Amended by L. 1947 c. 601 s. 2.

As provided in L. 1947, c. 601, s. 2, the application of the 30 per cent allotment is to taxes laid under section 340.47 and applies only to intoxicating liquors. Label

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certification is not included. Proceeds of stamps sold prior to July 1, 1947, to be affixed to containers for sale after July 1, 1947, are within the allocation requirements. Where merchants have in stock merchandise stamped at one dollar a gallon, and after July 1, 1947, an additional one dollar and fifty cents in stamps are attached, only the new tax money is set aside in a special fund under the 1947 act. OAG June 20, 1947 (218-N).

340.62 CERTAIN LIQUOR SHALL BE REGISTERED.

Equal protection as it relates to the police power exercised in control of intoxicating liquor. 20 MLR 88; 22 MLR 728; 23 MLR 87.

DISPOSITION OF SEIZED LIQUOR

340.63 DESTRUCTION OR DISPOSITION OF SEIZED LIQUOR.

Relating to the disposition of seized liquor. *State v Pederson*, 198 M 416, 270 NW 131; *City of Duluth v Cervený*, 218 M 511, 16 NW(2d) 779.

SEARCH AND SEIZURE

340.65 SEARCH AND SEIZURE.

Relating to searches and seizures. *State v Kelly*, 218 M 247, 15 NW(2d) 554.

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

In libel for condemnation of distilled spirits and wines, question as to validity of search and seizure in light of the fourth amendment to the federal constitution cannot be raised until the government has an opportunity to present its case on the merits. *United States v Cases of Liquor*, 65 F. Supp. 896.

Legality of seizure of automobile by officer without a warrant upon probable cause for believing that it contains liquor being illegally transported. 9 MLR 474.

Search and seizure. 13 MLR 1.

Return of liquor unlawfully seized by federal agents. 15 MLR 840.

Property interest required to object to use of evidence seized unlawfully. 17 MLR 561.

340.66 POSSESSION PRIMA FACIE EVIDENCE.

Provisions of section 340.66 cannot constitutionally be applied to the finding of a case of whiskey in one's private garage and three-half pints of gin in his automobile parked nearby. A statutory presumption or prima facie case cannot be sustained if there be no rational connection, rooted in common experience, between the fact proved and the ultimate fact presumed. *State v Kelly*, 218 M 247, 15 NW(2d) 554.

Possession under state prohibition acts, as including temporary control for purposes of taking a drink. 8 MLR 549.

Validity of statute making possession of liquor unlawful as applied to liquor lawfully obtained prior to enactment of such statute. 9 MLR 675.

340.67 OFFICER TO MAKE INVENTORY.

See, *City of Duluth v Cervený*, 218 M 511, 16 NW(2d) 779.

Seized liquor in a dry county should be disposed of as ordered by the court. OAG Dec. 20, 1946 (218-F-1).

VIOLATIONS AND PENALTIES

340.69 CERTAIN ACTS DECLARED TO BE MURDER.

Defendant was convicted of criminal negligence in the operation of a vehicle resulting in death, under section 169.11, and in affirming the decision the appellate court said "selling intoxicating liquor which when drunk causes death is a specific instance of murder in the third degree." State v Bolsinger, 221 M 154, 21 NW(2d) 486.

340.72 PLACES WHERE SALE FORBIDDEN.

The village council may establish a municipal liquor store if the village is in a county permitting license for the sale of liquor, and if at the last local election (as distinguished from a county option election) the vote in the village permitted license. OAG June 6, 1947 (218-G-13).

340.73 PERSONS TO WHOM SALES ARE ILLEGAL.

Subd. 1, amended by L. 1947 c. 87 s. 1.

340.78 SALES TO MINORS, HABITUAL DRUNKARDS, OR PERSONS UNDER GUARDIANSHIP AFTER NOTICE.

Forbidding the sale of intoxicating liquor to blacklisted persons does not apply to sale of non-intoxicating malt beverages; but the municipality may by ordinance prohibit the sale of malt liquors in a manner similar to the provisions of section 340.78. OAG Feb. 4, 1947 (R.C.) (218-i-3).

340.81 EXCLUSION OF MINORS FROM PLACES WHERE LIQUOR IS SOLD AFTER NOTICE; PENALTY.

Proof of criminal intent is unnecessary to sustain a conviction for contributing to the delinquency of a minor child by permitting the child to remain in a tavern contrary to statute. State v Sobelman, 199 M 232, 271 NW 484.

340.82 SALE TO INDIANS.

Amended by L. 1947 c. 87 s. 2.

The provisions of the Chippewa Indian treaty of Feb. 22, 1855, and the federal laws relating to the sale of liquor implementing a provision of said treaty is in effect until otherwise provided by congress, and the entire territory ceded under the treaty is subject to the federal liquor prohibitions. Johnson v Gearlds, 34 SC 794, 234 US 422.

340.85 DUTIES OF OFFICERS.

It is the duty of the county attorney and not the city attorney to prosecute for violations of chapter 340. OAG Aug. 1, 1946 (59-a-5).

Concurrent power under the eighteenth amendment. 6 MLR 447.

340.94 PROSECUTIONS AND EVIDENCE.

1. Jurisdiction of courts
2. Indictments
3. Complaints
4. Election
5. Proof
6. Variance
7. Evidence admissible
8. Sufficiency of evidence
9. Punishment

6. Variance

No "fatal variance" where complaint charged bartender with illegal sale of liquor on Sunday in violation of city ordinance and proof that defendant, whose employer had no off-sale license, sold a bottle of gin to person who removed it from the premises. Sale on Sunday did not require an allegation as to sale without a license. *State v Wilson*, 212 M 380, 3 NW(2d) 677.

7. Evidence admissible

Where the bottle of liquor purchased by the officers was broken, so contents could not be brought into court, permitting testimony as to labels and stamps, and contents was not error. *State v Russell*, 209 M 488, 296 NW 575.

Where the accused, while negotiations were pending admitted he sold liquor in violation of the city ordinance, the exclusion of testimony relating to purchase of defendant's stock of liquor by a club, and exclusion of commissioner's approval of proposed sale, was not prejudicial. *City of Duluth v Cerveney*, 218 M 511, 16 NW(2d) 779.

8. Sufficiency of evidence

Sufficiency of evidence as to hours of sale. *City of St. Paul v St. Aubin*, 201 M 208, 275 NW 623; *State v Wilson*, 212 M 380, 3 NW(2d) 677.

Courts take notice that whiskey is an "intoxicating liquor." *State v Russell*, 209 M 408, 296 NW 575.

Evidence to sustain conviction. *State v Jamieson*, 211 M 262, 300 NW 809; *State v Hope*, 212 M 319, 3 NW(2d) 499; *State v Davis*, 212 M 608, 3 NW(2d) 677; *State v Mueller*, 218 M 450, 16 NW(2d) 777; *City of Duluth v Cerveney*, 218 M 511, 16 NW(2d) 779.

340.941 SALE BY EMPLOYEE.

A municipal liquor store is operated both as a governmental and a proprietary function. Facts may be such that the municipality might be held liable in damages for wrongful, negligent, or unlawful acts of its bartenders or other employees. The municipality may secure liability insurance in protection from such danger or loss. 1944 OAG 198, Aug. 21, 1944 (218-J-10).

340.95 CIVIL ACTIONS FOR INJURIES CAUSED BY INTOXICATION.

The right of action under the death by wrongful act statute is given for the benefit of the surviving spouse and next of kin, while 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 for a tort done to plaintiff; and in the instant case, although recovery was had from the driver of the automobile, recovery is permitted to enforce the penalty imposed upon defendant by statute, ordinance, and, in the instant case by contract. *Phillips v Aretz*, 215 M 325, 10 NW 226.

Provisions of section 340.95 apply to municipal stores. OAG Feb. 3, 1943 (218-J-10).

° Liquor sellers' liability for intoxication of user. 17 MLR 337.

Wife's action at common law for loss of consortium from sale of liquor to husband. 25 MLR 113.

Governmental liability in tort. 26 MLR 293, 356.

340.96 DRUNKENNESS; SUCCESSIVE OFFENSES; SUSPENSION OF SENTENCE.

Defendant legally convicted of violation of an ordinance providing that "it shall be unlawful within any public street, ground or thoroughfare, or other public place within the limits of the city of Duluth, for any person to appear in such public place in a state of drunkenness." *City of Duluth v Oberg*, 210 M 262, 297 NW 712.