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REGULATION OF TAVERN CONDITIONS

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THE 18th Amendment to the Federal Constitution became the law of the land on January 29, 1919.

The Volstead Act under which Congress sought to enforce the Prohibition amendment was enacted on October 28, 1919 as a part of the Federal laws pertaining to Internal Revenue.

On February 20, 1933, Congress submitted a resolution to the States providing for the repeal of the 18th Amendment. It contains this clause:

“Sec. 2. The transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”

Then on March 22, 1933, the National Prohibition laws were amended respecting

“beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor, and fruit juice, containing one half of 1 per centum or more of alcohol by weight, and not more than 3.2 per centum of alcohol by weight, brewed or manufactured and, on or after the effective date of this Act, sold or removed for consumption or sale, within the United States, by whatever name such liquors or fruit juices may be called.”

This Act did not provide for any general repeal of the National Prohibition Act, even respecting these beverages, but provided for a penalty for the sale or manufacture thereof in any part of the Country when the laws therein provide to the contrary.

Under section 3244 of the Revised Statutes of the U. S. in addition to imposing a fifty dollar annual tax on wholesale malt liquor dealers, there is imposed an annual tax of twenty dollars on retail dealers in malt liquors. It provides:

“Every person who sells or offers for sale, malt liquors in less quantities than five gallons at one time, but who does not deal in spirituous liquors, shall be regarded as a retail dealer in malt liquors.”

In this article there will be discussed only the legal aspects of tavern regulation in those States where State prohibition acts are not in force respecting the beverages. Congress has permitted the manufacture, sale and transportation as above set forth.

The regulation in question is under the Police Power of the States themselves, or as it is duly exercised by the municipalities thereof under their general welfare powers or express legislative or constitutional authorization.

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The regulation in question may be either a condition precedent or subsequent to the Tavern license itself, or may be a part of the applicable penal code. No attempt will be made herein to set up these questions from a historical or comparative viewpoint.

In the regulation of traffic in intoxicating liquors the state may regulate the traffic in non-intoxicating liquors in order to render the former regulation effective.¹

In the light of this principle no point will be made as to whether or not the beverages permitted under the Federal Act of March 22, 1933 are intoxicating in fact and law.

The subject will be discussed with respect to regulations of Tavern locations and of Tavern conditions.

TAVERN LOCATIONS.

Taverns may be prohibited in certain districts of a municipality; and where the law makes no discrimination between persons, the discrimination that it makes between places cannot be said to create a monopoly or make the law invalid. Valid reasons for exclusion of Taverns from certain districts may be proximity to churches, a seminary, school-house, hospital, cemetery, parks, or other public or private institution. Other reasons may also be valid.²

Provisions containing a declaration that unlicensed premises where beverages, for which a license is required, are kept, manufactured, or sold constitute a public nuisance are valid.³

TAVERN CONDITIONS.

A statute prohibiting a standing bar or counter in any place where non-intoxicating liquors are sold is valid.⁴

Similarly a statute prohibiting booths, stalls or inclosures and requiring windows and doors to be unobstructed in any place where non-intoxicating liquors are sold is valid.⁵

A law which forbids the drinking of malt, spirituous, or vinous or other intoxicating beverages in any business house, store building, restaurant, hotel, livery stable, billiard hall, pool room, or bowling al-

¹ *Silber v. Bloodgood*, 177 Wis. 608, 188 N.W. 84 (1922); *Alby v. Smith*, 178 Wis. 138, 189 N.W. 493 (1922); *Kroepelin v. Milwaukee County*, 180 Wis. 424, 190 N.W. 454 (1923); *Pelkowski v. State*, 183 Wis. 322, 197 N.W. 935 (1924); *State ex rel. Attorney General v. Thekan*, 184 Wis. 42, 198 N.W. 729 (1924); *Milwaukee v. Meyer*, 198 Wis. 411, 224 N.W. 106 (1929).

² *People v. Cregier*, 138 Ill. 401, 28 N.E. 812 (1891); *State ex rel. v. Schwenhardt*, 109 Mo. 496, 19 S.W. 47 (1892).

³ *United States v. Richards*, 201 Wis. 130, 229 N.W. 657 (1930).

⁴ *Alby v. Smith*, supra.

⁵ *Alby v. Smith*, supra.

ley unless the person occupying the building shall be duly licensed to sell such beverages was sustained as constitutional in Colorado.⁶

Regulations providing that taverns be closed on Sunday are valid, as well as those which permit taverns to be open on Sunday for the sole purpose of furnishing meals and lodgings to travelers and boarders. Similarly regulations with respect to hours of opening and closing are valid.⁷

In Missouri the prohibition of an ordering of beverages by one person for another was upheld.⁸

A requirement against sale of such beverages to minors is also valid.⁹

It has been generally held that there is no common, natural or constitutional right which is violated by a law which forbids the "treating" of friends or acquaintances in Taverns, or which forbids the drinking of intoxicating liquor in places frequented by the public, or which forbids one to appear on the streets or in public places in a state of intoxication.¹⁰

Similarly the state may prohibit the giving away of such beverages.¹¹

Likewise a statute which prohibits the "trusting" or "extending of credit", over \$1.25 except to travelers or lodgers for drink or other Tavern expenses, and makes void any note or other security given for the same is valid.¹²

A statute requiring of all persons licensed to sell liquor, a bond conditioned for the payment of all damages to any persons inflicted upon or suffered by them, either in person or property or means of support, by reason of so obtaining a license, selling or giving away intoxicating drinks or dealing therein; and giving an action to any husband, wife, child, parent, guardian, employer or other person so injured against the person causing intoxication is constitutional and

⁶ *Delta v. Charlesworth*, 64 Colo. 268, 170 Pac. 964, (1918).

⁷ *Minden v. Silverstein*, 36 La. Ann. 912 (1884); *Megowan v. Comm.* 2 Metc. 3 (Ky. 1859); *Gabel v. Houston*, 29 Tex. 336 (1867); *Lynch v. People*, 16 Mich. 472 (1868); *Churchill v. Albany*, 65 Or. 442, 133 Pac. 632 (1913); *State v. Washington*, 45 N.J. L. 318 (1883); *Bennett v. Pulaski*, 52 S.W. 913, 47 L.R.A. 278 (Tenn. 1899); *Platteville v. Bell*, 43 Wis. 488 (1878).

⁸ *East Prairie v. Greer*, 186 S.W. 952 (Mo. App. 1916).

⁹ *State ex rel. Higgins v. Beloit*, 74 Wis. 267, 42 N.W. 110 (1889); *State ex rel. McKay v. Curtis*, 130 Wis. 357, 110 N.W. 189 (1907); *State ex rel. Conlin v. Wausau*, 137 Wis. 311, 118 N.W. 810 (1908).

¹⁰ *Tacoma v. Keisel*, 68 Wash. 685, 124 Pac. 137, 40 L.R.A. (N.S.) 757 (1912); *Delta v. Charlesworth*, supra; *Gallatin v. Tarwater*, 143 Mo. 40, 44 S.W. 750, (1898); *Lebanon v. Gordon*, 99 Mo. App. 277, 73 S.W. 222 (1903); *DeWitt v. LaCotts*, 76 Ark. 250, 88 S.W. 877 (1905); But see *St. Joseph v. Harris*, 59 Mo. App. 122 (1894).

¹¹ *Henshall v. Ludington*, 33 Wis. 107 (1873); *Wightman v. Devere*, 33 Wis. 570 (1873).

¹² *Bird v. Fake*, 1 Pinney 290 (Wis. 1843); *Johnson v. Meeker*, 1 Wis. 436, 378 (1853); *Gorsuth v. Butterfield*, 2 Wis. 175 (1853).

valid. Under such a law a wife was entitled to recover for any personal injuries suffered by her from the violence of her husband as the direct and natural consequences of his intoxication; also for her personal services and loss of health incurred in watching, nursing and caring for him, while suffering from injuries received while intoxicated; and for the expense of a physician to attend him and of others to assist in caring for him; and for injury to her property or means or support, caused by the loss of his earnings or his help in carrying-on her farm.¹³

Under such a statute if a drunken husband turns his wife out of doors the wife can recover for such indignity.¹⁴

A tavern keeper without a license cannot recover for beverages sold by him when he has no license required for such sale, or where he sells under circumstances or at times when the law prohibits such sale.¹⁵

The liability of the proprietor of a tavern for the acts of his employees in permitting violations of the law on his premises is in conflict in the various states.¹⁶

From the illustrations given it will be concluded, as has been held, that the subject of the regulation of intoxicating beverages is one within the Police Power and one for which the courts have confirmed the exercise of legislative power so long as the burdens of the regulations have fallen uniformly and regardless of individual preference. In this regard the courts have uniformly upheld the temporary preferences and hardships of individual regulation in the interest of a legislative declaration of public policy.¹⁷

¹³ *Henshall v. Lundington*, supra; *Wightman v. Devere*, supra.

¹⁴ *Peterson v. Knoble*, 35 Wis. 80 (1874).

¹⁵ *Melchoir v. McCarty*, 31 Wis. 252 (1872); *Wells v. McGeogh*, 71 Wis. 196, 35 N.W. 769, (1888).

¹⁶ *State ex rel. Conlin v. Wausau*, supra; *Noecker v. People*, 91 Ill. 494 (1879); *Commonwealth v. Stevens*, 153 Mass. 421, 26 N.E. 992, 11 L.R.A. 357 (1891); *Minden v. Silverstein*, supra.

¹⁷ See article by same author "State Liquor Dispensaries as a Solution to the Prohibition Question," 15 *Marquette Law Rev.* 90 (1931); also see article by J. Gilbert Hardgrove, "Does the Eighteenth Amendment Prohibit State Manufacture and Dispensation," 14 *Marquette Law Rev.* 59 (1930).