Intoxicating Liquors—Fermented Malt Beverage—One-half of One Per Cent of Alcohol—Shipment Into State.

A fermented malt beverage containing less than one-half of one per cent of alcohol cannot be introduced into this state.

May 12th, 1919.

Diemert & Umhoefer,
Moorhead, Minn.

Gentlemen:

I am in receipt of your letter of the 8th inst., asking whether or not you can ship a fermented malt beverage, containing less than one-half of one per cent of alcohol, into the State of Montana.

Chapter 39, Session Laws 1915, and Chapter 175, Session Laws 1917, prohibits the introduction into, and the manufacture and sale within this state of intoxicating liquor of any kind. Section 2 of Chapter 143, defines the phrase "intoxicating liquor" as including fermented and malt liquor and in the case of State vs. Centennial Brewing Co., 179 Pac. 296, recently decided, our supreme court held that this applied to fermented and malt liquor, even though the same contained no alcohol whatever.

You are, therefore, advised that fermented or malt liquor cannot be introduced into this state, even though such liquor contains no alcohol whatever.

Grain Grading, Inspection and Warehousing Commission —Statutes—Appropriation, in Title, Not in Bill—License—Refusal to Take Out—What Penalty For—Elevator Fees—Grain, Merchandising Of—License For—Expiration of Inspector—Federal Regulations — Warrants — Where Law Is Inoperative.

Where no appropriation is made in body of bill, though expressed in title, warrants cannot be drawn by State Auditor.

Under Chapter 147, Laws of 1917, there is penalty to pay license required by Section 29, Chapter 209, Laws of 1919.

Any number of warehouses or elevators may be operated by same person under one license.

A general store does not have to be licensed.

Under Chapter 209, Laws of 1919, all licenses ceased to be in force on July 1st, 1919.

The decision of a grain inspector is final, in that federal grain inspector has no authority in this matter.

Difficult to provide for the operation of the act, with no funds provided, but may exercise some control by licenses and bonds.

The law can be made operative only to the extent of the revenue derived from fees and charge authorized thereby.

May 13th, 1919.

Hon. Charles D. Greenfield,
Sec'y Grain Grading Inspection and Warehousing Commission,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 12th inst., requesting my opinion with reference to the following questions in connection with the Grain Grading, Inspection and Warehousing Commission, created by Senate Bill 193, now Chapter 209, Session Laws 1919:

> "1. While the title of said bill declares that an appropriation is provided for in the measure, there is no appropriation made in the bill, neither did the general appropriation bill carry any for the commission. There is no money in the fund which is supposed to be created by the law and the question is, if the commission orders warrants issued against the Grain Grading, Inspection and Warehousing Commission fund whether the auditor would have the power to issue such warrants."

In the title of the act is included the following: "and providing for an appropriation of any funds in the public treasury not otherwise appropriated, to carry on the preliminary work of the commission, until the fund created under the provisions of this act are available." However, examining the act discloses that no provision is made for any such appropriation, the only appropriation made being contained in Section 33 which appropriates, for the payment of expenses incurred by the commission, all fees, licenses and charges collected under the provisions of the act. And neither does the general appropriation bill carry any appropriation for this commission. It therefore appears that the only appropriation made for the commission is that contained in Section 33, and this only appropriates the fees, licenses and charges collected under the provisions of the Act.

Section 20 of Art. 7 of the constitution creates the State Board of Examiners, and requires such board to examine all claims against the state. Sec. 235, Revised Codes, provides that if no appropriation has been made for the payment of any claim presented to the board of examiners, or if an appropriation has been exhausted, the board may audit the claim, and if they approve it, must transmit it to the legislature with a statement of their approval, while Section 243 prohibits the state auditor from drawing his warrant for any claim unless it has been approved by the board.

Any claim presented to your commission will be a claim against the state, and the same must, therefore, be presented to and audited by the State Board of Examiners. I am, therefore, of the opinion that under the constitutional and statutory provisions above referred to, the legislature having failed to make the appropriation specified in the title of the act, and there being no money in the fund created by the act, the State Board of Examiners cannot order any warrant drawn in payment of any claim presented to the commission, and the State Auditor cannot issue any warrant in payment of any such claim. Of course, whenever any licenses, fees or charges have been collected, and paid into the fund created by Section 33, claims may be approved by the board of examiners and warrants ordered issued by the state auditor in payment thereof, provided there is sufficient money in such fund to pay the same.

> "2. The law does not provide any penalty for the refusal by those engaged in the grain business who are supposed to be licensed by the commission in case of refusal of grain dealers to take out a license. Under this condition what authority is there for compelling those who refuse to take out a license and what the punishment for refusal so to do?"

Chapter 93, Session Laws 1915, relating to grain elevators, grain warehousemen, etc., requiring licenses to be paid by public warehousemen, grain dealers and track buyers, covered this whole subject, and expressly repealed Chapter 47, Session Laws 1913, and all acts and parts of acts in conflict therewith. Section 29 of said Chapter 93 provided a penalty for transacting business as a grain dealer, public warehouseman, or track buyer without first procuring a license as provided in said Act. By Chapter 147, Session Laws 1917, certain sections of Chapter 93, Session Laws 1915, were repealed, certain thereof amended, and certain thereof re-enacted, among those re-enacted being Section 29. Chapter 209, Session Laws 1919, nowhere specifically mentions or refers to Chapter 93, Session Laws 1917, and by Section 33 only repeals such acts and parts of acts as are in conflict with the provisions of such act. None of the provisions of Section 29 of Chapter 147, Session Laws 1917, being in conflict with any of the provisions of Chapter 209, Session Laws 1919, said Section 29 is not thereby repealed, but still remains in full force and effect. I am, therefore of the opinion that Sec. 29 of Chapter 93, Session Laws 1915, as re-enacted by Chapter 147, Session Laws 1917, provides a penalty for the failure, refusal or neglect to pay the license required by Sec. 29, Chapter 209, Session Laws 1919.

> "3. The law provides that each person, firm, corporation or asociation of persons operating any public warehouse subject to the provisions of this act and each track buyer, dealer, broker or commission man or person or association of persons merchandising in grain, shall give a bond to the commission and upon the approval of the bond and the payment of a fee of $15 a license shall be issued to the applicant. In Montana there are associations and corporations which own each a number of elevators and the question is whether, where a corporation or association owns more than one elevator, the license fee of $15 must be charged for each

elevator owned by the same company, corporation or association or whether the one license covers all the elevators owned by the same individual, association or corporation."

The language used in Section 29 is as follows: "every person, firm, corporation, or association or persons operating any public *warehouse* or warehouses" etc. If the word "warehouse" alone had been used it would be apparent that it was intended that the license should be paid for each warehouse operated, but when the words used are "warehouse or warehouses" it would appear that it was the intention of the legislature, by inserting the words "or warehouses" that but one license should be required of any person, firm, association or corporation, regardless of the number of warehouses operated by such person, firm, association or corporation. I am, therefore, of the opinion that but one license is required of any person, firm, association or corporation, and that under such license such person, firm, association or corporation may operate any number of warehouses.

"4. The law says that those merchandising in grain shall give a bond and be licensed. Does this mean that the general store or the feed store which buys grain for its own account and retails it must give a bond and be licensed by the commission?"

From the provisions of this act it is apparent that it was intended only to apply to those engaged in buying, storing and handling grain for milling purposes, and not to those who might be engaged in business, and in conducting such business, purchasing grain on their own account and retailing the same to their customers. Your fourth question is therefore answered in the negative.

"5. Under the law repealed by Senate Bill No. 193 which became effective March 13, 1919, a number of licenses were issued to elevator concerns and track buyers in Montana which do not expire until after July 1, 1919. Query: Do the licenses which were issued for a year under the old law and which have not expired, automatically expire July 1, 1919, or do they run for the full term under which they were issued under the old law?"

Section 46, Chapter 93, Session Laws 1915, contained a provision saving and keeping in effect licenses issued under Chapter 47, Session Laws 1913, while Section 24 of Chapter 147, Session Laws 1917, contained a similar provision, but no such provision is found in Chapter 209, Session Laws 1919. As the only fee which was required to be paid for licenses under Chapter 147, Session Laws 1917, was one dollar to the Secretary of State for filing the bond required, I am of the opinion, that all such licenses cease to be in force and effect on July 1st, 1919, and that every person, firm, association and corporation required by the provisions of Chapter 209 to procure a license must procure the required license if he desires to continue to engage in such business after July 1st, 1919.

"6. Under the grain inspection sections of Senate Bill No. 193 a chief inspector is provided for and in grading grain he is to adhere to the standard set by the federal government. Where the transaction is wholly within the state, that is, where an elevator at, say Helena, sells grain to the mill at Lewistown and there is

a question as to the grading of the grain, is the decision of the inspector in the employ of the commission final or would the final decision lie with the federal inspector of grain?"

The provisions of Chapter 209, providing for the establishment of standard grades, simply adopts as grain standards all grades now or hereafter established by the United States Department of Agriculture. This does not mean that the federal government, or any department thereof, or any federal inspector of grain has anything whatever to do with the inspection of grain where the grain is shipped or transported from one point in this state to another point in this state, but simply means that the grades established by the Department of Agriculture shall be the guides for grading grain under this act. It therefore follows that the decision of the grain inspector appointed under this act is final in such a case, as the federal grain inspector would have nothing to do with it.

"7. The commision desires me also to ask you whether if in your opinion warrants could not be issued as suggested, and there being no appropriation available to carry out the intent of the law, how the law can be made to operate?"

This is a difficult question to answer. The provisions of this act seem to contemplate that the entire cost and expense connected with its operation shall be defrayed out of licenses, fees and charges collected under its provisions. Until some revenue is received from such licenses, fees and charges there will be no money in the fund created by the act out of which thse costs and expenses can be paid, and just what the total expense will be each year and the total revenue which will be derived to meet such expenses I do not know, but it seems to me extremely doubtful whether the revenues received will be anywhere near sufficient to defray the expenses. However, as under the provisions of this act, you can require every person specified in the act to give the specified bond and procure the license required, this will afford some measure of protection to the grain raisers of the state, although not the protection to which they are entitled.

"8. Also, if in your opinion the law is inoperative, is there any way in which there may be regulation of public warehousemen, track buyers and others engaged in the grain business so that the producer may be protected?"

I have partly answered this question in my answer to your question 7. The act can be made operative to a certain extent by reason of the bond and license required by its provisions. Otherwise I know of nothing that can be done to make it more effective. It is possible, of course, after your license fees, charges and other fees commence to come in, you will be able to make an estimate of the revenue which will be derived under the act, and will then be able to tell what other provisions you can comply with, but until you are able to make an estimate of the revenue which will be received the hands of the commission are practically tied so far as complying with all of the provisions of the act are concerned.

Respectfully,

S. C. FORD,

Attorney General.