

**Intoxicating Liquors — Sale — Not Necessary to Prove
Transfer of Title—Search and Seizure—Amount in Possession
—Shipments.**

It is not necessary to prove transfer of title to obtain a conviction for sale.

Search and Seizure clause generally held valid.

Keeping in possession is prima facie evidence of having some for unlawful purpose.

Shipments cannot be made into this state for personal use.

December 12th, 1918

Mr. C. R. Stranahan,
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Havre, Montana,

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Dear Sir:

I have your letter of the 2nd inst. regarding the prohibitory enforcement laws and note contents of same.

On a careful examination of this law I am satisfied that you will find that it is effective in every way. The law was drafted in this office, although some amendments were made to it in the legislature, and when it was drafted we had before us the prohibitory enforcement laws of Kansas, Oklahoma, Washington, Colorado and Oregon, and the laws of Maine, North Dakota and several of the other states had been examined, and in drafting the law, we followed very closely the laws of Kansas, Oklahoma and Washington; in fact, the main features of the law are almost identical with those of the laws of those three states.

Since the passage by Congress of the Webb-Kenyon law prohibiting shipments in interstate commerce to prohibition states, these three states have had little difficulty in enforcing these laws.

So far as being compelled to prove a transfer of title to the liquor in order to get a conviction, you are incorrect in assuming such to be the case, and similar provisions contained in the laws of other states have not been so construed.

So far as a search and seizure law is concerned Sections 7, 8 and 9 contain all necessary provisions for searching for the seizure of intoxicating liquors. These provisions are almost identical with those of the Kansas, Oklahoma and Washington laws, the only difference being that the legislatures inserted by amendment the provision with reference to the issuance of warrant to search a private dwelling, and this provision is found in the enforcement laws as a number of the state, being almost identical with the present Maine and the Iowa laws.

With reference to limiting the amount which any one person may have in his possession, there is some question whether such a provision is constitutional, the courts having held both ways. However, in some states this difficulty has been overcome by making proof of the possession of any quantity exceeding a certain limited amount prima facie evidence of possession of an unlawful purpose, and we have had under consideration the offering of a bill to the legislature containing such a provision.

You will notice that Section 15 makes an internal revenue stamp tax, license, etc. and record thereof, prima facie evidence of a sale. We are also considering the offering of a bill amending this section by adding thereto that the finding of bars, glasses, fixtures, etc., will constitute prima facie evidence of a sale and also that the place where found is maintained as a nuisance.

The impression seems to be quite general that under the prohibitory and prohibitory enforcement laws any individual may purchase and bring or ship into the state any quantity of liquor so long as it is for his own individual use, but this impression is erroneous as the prohibitory law absolutely prohibits the introduction into the state of ardent spirits and intoxicating liquor, the only exception being sacramental wines, denatured alcohol and alcohol for scientific and manufacturing purposes. In some of the states the prohibition is only against the introduction for sale or gift, thus permitting the introduction for the personal use of the introducer, (See Colorado Constitutional provision) but the provision of Sec. 1, Chap. 39, Session Laws 1915, absolutely prohibits the introduction, the words used not being qualified by the words "for sale or gift."

I have written to the Attorney General of each of the different states in which prohibitory and prohibitory enforcement laws are now in force, asking them to send me copies of these laws and also requesting that they advise me generally regarding their effectiveness and what amendments they believe necessary to render them more effective, and have just commenced receiving replies thereto. It is possible that after I have heard from a number of them and examined their laws I may

suggest to the legislature the amendment of our laws in some particulars and possibly the enactment of additional provisions, particularly with reference to rules and regulations governing the introduction, sale and use of sacramental wines, denatured alcohol and alcohol for manufacturing and scientific purposes.

I am also having prepared to be printed in pamphlet form copies of our laws giving the decisions of the courts of the different states construing similar provisions in the laws of the different states, these to be distributed among the county attorneys and other officers who are required to enforce these laws. I am in hopes to have these ready for distribution by the first of the year but it is possible that there may be a slight delay. As prohibitory and prohibitory enforcement laws similar to ours have been in force in some of the states, particularly North Dakota, Maine, Kansas, Oklahoma and Washington for several years, and their provisions have been construed many times I believe that this pamphlet will be of material assistance to the county attorneys in the prosecution of cases arising under these laws.

Thanking you for the interest you have taken in this matter, and for the suggestions offered, I am,

Respectfully,
S. C. FORD,
Attorney General.