

**Intoxicating Liquors — Prohibition Act — Enforcement Act.**

A bill permitting the manufacture and sale of liquors when the alcoholic content does not exceed one-half of one per cent of alcohol would be unconstitutional.

March 8th, 1919.

Hon. S. V. Stewart,  
Governor,  
State Capitol Building.

Dear Sir:

I desire to present for your consideration the following in connection with Senate Bill No. 91, which, having passed both Houses of the Legislature, has been transmitted to you for your approval.

The Fourteenth Legislative Assembly referred to the electors of this state as a prohibition law, which now appears as Chapter 39, Session Laws 1915, and Chapter 175, Session Laws 1917. At the general election held in November, 1916, this law was approved and adopted by a majority of more than twenty-eight thousand. This law absolutely prohibits the introduction into, manufacture, or sale within this state of ardent spirits, or any compound thereof capable of use as a beverage, ale, beer, wine or intoxicating liquor of any kind. The only exception being made with reference to denatured alcohol, wines for sacramental purposes and alcohol for scientific and manufacturing purposes.

Knowing that this law would be in effect on December 31st, 1919, I realized, when I assumed the office of Attorney General, that the law would be in force for some few weeks without any provisions of law whatever looking to its enforcement, unless the legislature then in session enacted such a law. Accordingly, I prepared a bill for a law containing what I believed at that time to be proper provisions for its enforcement, and this bill was enacted into a law by the legislature with but few slight amendments, and with practically no opposition, and is now Chapter 143, Session Laws 1917. In the Senate the vote on third reading was 35 voting for the passage of the bill and 3 voting against its passage, while in the House the vote was 59 voting for its passage and 9 voting against its passage.

Knowing that this enforcement law had been prepared somewhat hurriedly, and that it was possible that some of its provisions might not prove effective to accomplish the purpose intended, I thought it advisable to carefully study the same, and if I found that it could be improved in any way to prepare a bill amending the same in such particulars as might appear necessary. To this end, during the five or six months immediately preceding the commencement of the session just ended, a careful study was made of the enforcement laws of the different states in which prohibition was in force, and considerable correspondence was had with the Attorney General of such states with reference to the effectiveness of the provisions of their laws, and from

this study and correspondence I became satisfied that some of the provisions of our enforcement law could be improved in some respects so as to make it more effective.

In the meantime, and about the time the prohibitory law went into effect, the brewing interests in the state commenced to assert that under Section 2 of the Enforcement Act it was lawful to manufacture and sell near beer and other malt liquors which contained less than two per centum of alcohol measured by volume.

In order, therefore, to make this enforcement law more effective, and also for the purpose of removing any doubt there might be as to the right to manufacture and sell near beer and other malt liquors containing less than two per centum of alcohol, I prepared a bill, which was introduced in the Senate by Senator Lewis and is known as Senate Bill No 91. As prepared by me, and as introduced by Senator Lewis, this bill only attempted to amend certain sections of the enforcement law, and did not purport and neither did it attempt to amend the referendum prohibitory act, and it contained only such provisions as the experience of the law officers of other prohibition states had found necessary and proper to effectually enforce the prohibition law. I am attaching hereto a copy of this bill as ordinarily introduced so that you may see just what amendatory provisions it contained.

Shortly after this bill was introduced the Supreme Court of this state decided the case of State vs. Centennial Brewing Co., upholding in every particular my contentions with reference to the construction to be given the referendum prohibitory law and Section 2 of the enforcement law, holding that the prohibitory act absolutely prohibited the introduction, manufacture and sale for any purpose of ardent spirits, any compound thereof capable of use as a beverage, ale, beer, wine and intoxicating liquor, which was defined by Section 2 of the enforcement law as being whiskey, brandy, rum, gin, wine, ale, spirituous, vinous, fermented and malt liquors, regardless of the alcoholic content, and that, consequently, malt liquors of all kinds were under the ban, regardless of the amount of alcohol which they might contain. I am attaching hereto a copy of the opinion in this case.

Immediately upon this decision being rendered the brewing interests of this state became exceedingly active and sent a number of lobbyists to Helena to induce the legislature to enact legislation which would permit the introduction, manufacture and sale of near beers and other liquors containing a small percentage of alcohol, notwithstanding the fact that the prohibitory law absolutely prohibited the same. The result has been that the legislature has amended Senate Bill No. 91 until it has practically no resemblance to the bill originally introduced by Senator Lewis.

With reference to the amendments made to Section 1, which amends Section 2 of the enforcement law, I am satisfied that such amendments rendered such section unconstitutional.

Chapter 39, Session Laws 1915, is the prohibitory law, while Chapter 143, Session Laws 1917, is a law, commonly called the enforcement law, which contains no prohibitory provisions whatever, but simply

contains provisions for the enforcement of the prohibitory law. In the case of *State vs. Centennial Brewing Co.* the Supreme Court made this very plain, saying that the enforcement law was not intended to, and did not, attempt to amend in any particular the prohibitory law, and that if it had been intended, or had attempted to amend the prohibitory law it would have been unconstitutional by reason of being in violation of Section 25 of Article 5 of the Constitution. Here these amendments are intended to amend the prohibitory law. The prohibitory law absolutely prohibits the introduction, manufacture or sale of ardent spirits, ale, beer and wine, and ardent spirits, the Supreme Court says, in *State vs. Centennial Brewing Company*, means spirituous liquors, whiskey, brandy, rum and gin, so that by the prohibitory law we have the introduction, manufacture and sale of all of these liquors, regardless of their alcoholic content, absolutely prohibited, but by these amendments it is made lawful to introduce, manufacture and sell any of these liquors, whiskey, brandy, gin, rum, ale, beer and wine when the alcoholic content does not exceed one-half of one per cent of alcohol. If under the prohibitory law all of these liquors are under the ban regardless of their alcoholic content, then these amendments, by lifting the ban as to them when they only contain one-half of one per cent or less of alcohol, affects an amendment of the prohibitory law. Not an amendment by implication but a direct amendment. And so attempting and intending to amend the prohibitory law such section is unconstitutional for the following reasons:

First. It is in violation of the provisions of Section 25, Article 5, of the Constitution, as it fails to re-enact and publish at length that portion of the prohibitory law intended and attempted to be amended, which the case of *State vs. Centennial Brewing Company* holds must be done.

Second. The bill contains a subject, the enactment of the prohibitory act, which is not expressed in its title, in violation of Section 23 of Article 5 of the Constitution.

Third. The bill, as introduced, was an amendment to certain sections of the enforcement act, which the Supreme Court had said in *State vs. Centennial Brewing Company*, is not an act amending the prohibitory law, but an act supplemental thereto, and those amendments have altered and changed the original purpose of such bill so that Section 2 thereof is now amendatory of the prohibitory act, and the bill is, therefore, in violation of Section 19, Article 5, of the Constitution which provides that no bill shall be so altered or amended on its passage through either house as to change its original purpose.

The sole argument presented in favor of these amendments was that the introduction, manufacture and sale thereof should be permitted for the reason that they cannot be termed intoxicating liquors as they cannot possibly produce intoxication when containing such a small percentage of alcohol. The legislature seems to have lost sight altogether of the evils that will result from so doing. I have submitted to you a letter protesting against permitting House Bill No. 430 becoming a law, and the statements contained in such letter apply with equal force against permitting this bill to become a law. I assert now

that if this bill becomes a law every opportunity will be furnished blindpiggers and bootleggers to violate the prohibitory law and the law officers of this state will be so greatly handicapped that the enforcement of the prohibitory law will be a farce and a byword.

In the case of State vs. Centennial Browing Co., our Supreme Court said that by the prohibitory law the manufacture and sale of denatured alconol, alcohol for scientific and manufacturing purposes and wine intended for the sacrament are specifically excepted from the operation of the law, but, with these exceptions, the sale of everything which falls within the fair import of the terms employed is absolutely prohibited. Among the liquors enumerated in the prohibitory law and the introduction, manufacture and sale of which are absolutely prohibited, is beer and wine, and yet under the amendments to this bill, beer and wine containing less than a certain percentage of alcohol is permitted. I submit that the electors of this state having approved and adopted the prohibitory law by a majority of over 28,000 they clearly and plainly indicated their desire that, as said by the Supreme Court in such case, the liquor traffic should be suppressed and outlawed, not that it should be regulated and supervised, and that any bill which attempts to amend the prohibitory law, and to provide for regulation and supervision instead of suppression and outlawry, should be submitted to the electors of this state for their approval or rejection before it be permitted to become a law.

With reference to that part of Section 1 of this bill which deals with extracts, essences and medicines, these matters have been fully covered by Senate Bill No. 87, which has been passed by the legislature and transmitted to you for your approval or rejection, so that no injury will result to any person dealing in such articles if this bill is not permitted to become a law.

Section 3 of this bill, which amends Section 8 of the enforcement act, is a monstrosity. In the enforcement laws of every prohibition state will be found provisions for search and seizure, and in drafting this section particular care was taken to insert those provisions found in these laws which render them effective, yet the legislature, in its infinite wisdom, has deemed it necessary to strike out many of these provisions and to insert others which will handicap in every possible way the procuring of judgments condemning intoxicating liquors owned and intended for unlawful sale. I have in my office pamphlets containing copies of these laws of several of the states, and the laws of all of the prohibition states can be found in the law library. If you desire to compare these laws with the provisions found in this section of this bill I will be glad to furnish you with copies of the same.

Permit me to say that it is my humble judgment that if the legislature had deliberately intended to enact a law which, without actually repealing the prohibitory law, would render it ineffective, and would hinder and handicap, in every possible manner, the law officers of the state in enforcing its provisions, such purposes could not have been more fully accomplished by such a law than has been done by the amendments made to this bill.

If this bill becomes a law it will mean that the decision of the Supreme Court in the case of State vs. Centennial Brewing Company is nullified, and that before we will be able to enforce the prohibitory law we will have to again present the entire question to the Supreme Court and have both the prohibitory law and the enforcement law again construed.

I, therefore, earnestly protest against this bill being permitted to become a law, and I insist that any bill which attempts in any manner to amend the prohibitory law should, before becoming a law, be referred to the electors for their approval or rejection.

Respectfully,

S. C. FORD,

Attorney General.