

**Cities and Towns — Ordinances — Nuisances — Intoxicating  
Liquor.**

The enactment of initiative measure No. 30 does not affect the authority of cities and towns to regulate the liquor traffic within their corporate limits, and cities and towns may pass ordinances regulating the liquor traffic upon the general theory of a nuisance.

M. R. Wilson, Esq.,  
Police Judge,  
Bozeman, Montana.

Nov. 15, 1926.

My dear Mr. Wilson :

You have requested my opinion whether cities and towns still have power since the adoption of initiative measure No. 30, to enact ordinances

making traffic in intoxicating liquor a nuisance, and providing for the punishment thereof.

The adoption by the people of Montana of initiative measure No. 30 does not, in my opinion, change in any way the powers of cities and towns with respect to the enactment of the liquor traffic. Municipalities still possess whatever powers have been granted to them by the legislature with respect to the regulation of the liquor traffic and there is nothing in initiative measure No. 30 which limits or curtails those powers.

Subdivision 25 of section 5039 R. C. M. 1921, to which you refer in your letter, authorizes city and town councils to pass ordinances "to prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof."

This clause of the statute makes no reference to the subject of nuisances and in my opinion an ordinance drawn under it could go no further than the regulation of the specific things enumerated in the language used. Subdivision 33 of the same section, however, gives city and town councils power "to define and abate nuisances." Discussing the general subject of the power of municipal corporations under such a statute to declare what constitutes a nuisance, McQuillin on Municipal Corporations, section 902, says:

"Under like power an ordinance declaring that the sale of spirituous liquor within the corporate limits is a nuisance, was sustained." (Citing *Goddard v. Jackson*, 15 Ill. 588; *Block v. Jacksonville*, 36 Ill. 301.)

The same author says in the section quoted:

"The prevailing rule of law is well established that, under a general grant of power, the authority of a municipality to declare what shall be deemed a nuisance is not so absolute as to be beyond the cognizance of the courts to determine whether it has been reasonably exercised in a given case or not."

The constitution of the United States makes it unlawful to manufacture, sell or transport intoxicating liquors within the United States.

It is, therefore, my opinion that a city nuisance ordinance might be drafted upon the general theory of declaring such acts a nuisance within the limits of a city and that such an ordinance should be sustained by the courts as a reasonable exercise of the authority granted municipalities by the legislative assembly.

Very truly yours,

L. A. FOOT,

Attorney General.