

Opinion No. 381**Liquor Control Act—Constitutional
Law—Interstate Commerce**

HELD: The provisions of the Montana Liquor Control Act do not violate the Commerce Clause of the United States Constitution in view of the provisions of Section 2 of the proposed 21st. Amendment.

November 8, 1933

You ask whether or not the provisions of the Montana Liquor Control Act violate the Commerce Clause of the United States Constitution by interfering with the freedom of interstate commerce insofar as such provisions operate to prevent the purchasing of liquors by Montana residents directly from importers in New York City, initiating the transaction by mail and consummating it by railway shipments through interstate commerce.

I think this question is answered by Section 2 of the proposed 21st. Amendment, repealing the 18th. Amendment, which reads: "Section 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."

Years ago it was held that Congress itself, without the necessity of any constitutional provision, might divest intoxicating liquors of their character as interstate commerce upon arrival in a state even though imported in the original packages by the individual user. We call attention to the provisions of the Webb-Kenyon Act of March 1, 1913, (37 Stat. L. 699, c. 90) as amended by the Reed Amendment of March 3, 1917 (39 State L. 1069) which legislation was held valid in *Clark Distilling Co. v Western Maryland R. Co.* 242 U. S. 311, 61 L. Ed. 326, LRA 1917B, 1218, 37 S. Ct. R. 180; and in *United States v. Hill*, 248 U. S. 420, 63 L. Ed. 337, 39 S. Ct. R. 143.