

1882

INTOXICATING LIQUOR—TOWNSHIP TERRITORY—
WHERE SALE NOT PROHIBITED AND TERRITORY AN-
NEXED TO VILLAGE WHICH VOTED TO PROHIBIT SALE
OF INTOXICATING LIQUOR, THE TERRITORY WILL RE-
MAIN WET AFTER ANNEXATION UNTIL FURTHER ACTION
OF ELECTORATE.

SYLLABUS:

Where township territory in which the sale of intoxicating liquor is not prohibited is annexed to a village which has voted to prohibit the sale of intoxicating liquor, that territory will remain wet after the annexation, until further action has been taken by the electorate.

Columbus, Ohio, June 12, 1950

Honorable Oscar L. Fleckner, Director, Department of
Liquor Control, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is respectfully requested of the following question:

“If a dry municipality annexes, by petition, territory which is wet, what then is the status of the annexed territory as to being wet or dry?

“A village in the State of Ohio is being petitioned by residents of a township to be annexed to the village. The territory proposed to be annexed is wet and there are at the present time and have been for a long time past, two permit holders. The village itself has been voted dry. The issue is an important one and it will be necessary for this Department to consider what, if any, disposition should be made with respect to the two permit

premises since the permits will expire by operation of law and we are compelled to assume that applications will be filed for reissuance.

“Should it be your opinion that the territory proposed for annexation will become dry by act of annexation to a dry territory, then and in that case, your further opinion is requested as to whether the permit holders have the legal right to file applications for transfer of location from one political subdivision, namely, the presently wet territory proposed for annexation, to an adjoining political subdivision. This question arises because of the provisions of Regulation No. 70 promulgated by the Board of Liquor Control.”

The sale of intoxicating liquor is legal in all parts of the State of Ohio except in areas which have voted to prohibit such sales pursuant to the authority of Section 6064-31 et seq. of the General Code of Ohio. Section 6064-31, *supra*, reads as follows:

“Local option privilege conferred upon electors of certain districts. The privilege of local option as to the sale of intoxicating liquors is hereby conferred upon the electors of the following districts, to wit:

“1. A municipal corporation.

“2. A residence district in a municipal corporation consisting of two or more contiguous election precincts therein, as defined by the petition hereinafter authorized.

“3. A township, exclusive of any municipal corporation or part thereof therein located.”

The sections of the General Code immediately succeeding the above-quoted statute set forth the method by which the political subdivisions named in Section 6064-31, *supra*, may prohibit the sale of alcoholic beverages. Briefly, the method set forth therein is as follows: Upon petition signed by the qualified electors of the district concerned, equal in number to fifteen per cent of the total number of votes cast for governor at the next preceding regular state election in such district a special election shall be called at which questions concerning the sale of alcoholic beverages shall be presented to the voters. If a majority of those voting vote to prohibit the sale of said beverages, such sales will be forbidden.

Since the electors of the township territory to be annexed to the village mentioned in your letter have not had the opportunity to be counted in determining the sufficiency of the petition on which the special election

was predicated, nor have they had the opportunity to vote at the election at which the village was voted dry, they are not bound by the special law enacted at that election.

In the case of *In re Davis and Foote Local Option* 4 O.N.P. (NS) 417, the reverse of this question was before the court. In that case an area which had voted dry pursuant to the local option laws in effect at that time was annexed to a larger area where the sale of intoxicating liquor was legal. Judge Hadden on page 421 of his opinion said:

“It is a general rule when territory is annexed to a municipal corporation, that the annexed territory at once becomes subject to the ordinances and regulations of that corporation * * *. By analogy, it is urged that the territory which is annexed to a ‘wet’ municipal corporation would partake of the status of the corporation to which it is annexed, even if the annexed territory had been voted ‘dry’ before annexation, and vice versa.

“But the status of ‘wet’ or ‘dry’ is not created by an ordinance or by a regulation. It is the creature of a state enactment upon the will of the voters. And the condition of a municipal corporation as to local option, after the electors thereof have taken advantage of all of the opportunities which the statutes of this state now offer them, would not always be easy to figure out. * * *”

The problems and inconsistencies which would arise were we to say the annexed territory would assume the dry status of the village are many. It is possible that the number of voters in the annexed territory would exceed the number in the village. It is also possible that none of the voters in the annexed area would vote to prohibit the sale of liquor and that this sale was prohibited in the village by a majority of one vote. These questions cannot be determined without an election in the village as now constituted.

It is also apparent that under Section 6064-31, *supra*, the sale of intoxicating liquor can be legal in part of a village and illegal in another part of the same village. Therefore, since the voters of the township territory have not voted on the question of prohibiting the sale of alcoholic beverages, that territory remains subject to the general laws of the State of Ohio and the sale of intoxicating liquor is legal in that area.

It is my opinion that where township territory in which the sale of intoxicating liquor is not prohibited is annexed to a village which has

voted to prohibit the sale of intoxicating liquor, that territory will remain wet after the annexation, until further action has been taken by the electorate.

Respectfully,

HERBERT S. DUFFY,
Attorney General.