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ELECTION, LOCAL OPTION—UNDER LIQUOR CONTROL ACT DETERMINES QUESTION WHETHER OR NOT “SALE” OF INTOXICATING LIQUORS MAY BE PERMITTED IN DISTRICT CONCERNED—SUCH ELECTION SHALL NOT IN ANY WAY AFFECT POSSESSION OR CONSUMPTION OF INTOXICATING LIQUORS WITHIN DISTRICT.

SYLLABUS:

A local option election, under the Liquor Control Act of Ohio, determines the question only whether or not the “sale” of intoxicating liquors may be permitted in the district concerned, and under the specific provisions of Section 6064-38, General Code, such election shall not in any way affect the possession or consumption of intoxicating liquors within the district.

Columbus, Ohio, January 12, 1950

Hon. Wray Bevens, Prosecuting Attorney
Pike County, Waverly, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There is located in this county a bona fide Club. The same having been in existence for several years, and having a registered membership. The offices and club rooms for this organization are located in a township which was recently voted ‘dry.’

“Would it be permissible for the members of this club to maintain individual locker system in which liquors, whiskeys, and other intoxicants may be kept and consumed by the owners thereof on the portion of the premises reserved exclusively for members only?”

As I view the question raised by you, it may be answered by the following local option provisions of the Liquor Control Act of Ohio, pursuant to which I assume the township in question became “dry”:

1. Section 6064-17, General Code, authorizing an election on the question of allowing spirituous liquor to be sold by the glass in a liquor control district when a petition signed by fifteen percent of the number of voters voting for governor at the last election in such district is filed with the board of elections of the county concerned.

2. Section 6064-33, General Code, provides in part as follows :

“At such election each and all of the following questions shall be submitted to the electors of the district, to-wit:

“(a) ‘Shall the sale of any intoxicating liquor be permitted in.....?’”

“(b) ‘Shall the sale of wine by the package for consumption off the premises where sold, be permitted in.....?’”

“(c) ‘Shall the sale of wine for consumption on and off the premises where sold, be permitted in.....?’”

“(d) ‘Shall the sale of spirituous liquors by the glass be permitted in?’”

“(e) ‘Shall state liquor stores for the sale of spirituous liquor by the package, for consumption off the premises where sold, be permitted in.....?’”

3. Section 6064-38, General Code, provides as follows :

“No local option election held pursuant to this act (G. C. §§ 6064-1 to 6064-61) shall in any wise affect the transportation, possession, or consumption of intoxicating liquors within the district in which the same is held, nor sales in such district under class B-3, class E or class G permits herein authorized.”

Even a hasty reading of the local option provisions of the Liquor Control Act of Ohio referred to above reveals that the purpose and scope of such elections are limited to determination of whether or not the “sale” of intoxicating and spirituous liquors should be permitted within the area. Further, Section 6064-38, quoted in full above, specifically provides that no local option election “shall in any wise affect the transportation, possession, or consumption of intoxicating liquors.”

Therefore, in specific answer to your question, I am of the opinion that a local option election, under the Liquor Control Act of Ohio, determines the question only whether or not the “sale” of intoxicating liquors may be permitted in the district concerned, and under the specific provisions of Section 6064-38, General Code, such election shall not in any way affect the possession or consumption of intoxicating liquors within the district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.