

which the commissioners of said county shall be liable by virtue of notice similar to that provided for in sections 3482 and 3483 of the General Code, which notice for the purpose of action herein provided for may be given by a board, officer or person authorized to bring such action."

If the opposite conclusion were reached with respect to the legal settlement of a wife by virtue of the above section, if strictly construed, a wife might be separated from her husband and the family broken up by such legal proceedings. It is not thought that the legislative intent in enacting Sections 3477, et seq., was ever to produce such dire consequences.

Consequently, it is my opinion that where a woman marries a person who has a legal settlement in a county, she thereby acquires by her marriage such legal settlement without living therein for twelve consecutive months.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2381.

BEER—LOCAL OPTION PROVISIONS OF SECTION 19 OF AMENDED SUBSTITUTE SENATE BILL NO. 346 NOT NULLIFIED BY REPEAL OF SECTION 20 OF AMENDED SUBSTITUTE SENATE BILL NO. 346 IN SECTION 63 OF OHIO LIQUOR CONTROL ACT—MANNER OF SUBMITTING QUESTION TO ELECTORATE.

SYLLABUS:

The local option provisions of section 19 (section 6212-62, General Code) of Amended Substitute Senate Bill No. 346 were not nullified by the repeal of section 20 (section 6212-63, General Code) of Amended Substitute Senate Bill No. 346 in section 63 of the Ohio Liquor Control Act, inasmuch as section 6212-63, General Code, was reenacted in the latter act.

In holding a local option election in reference to the sale of beer, as provided in section 6212-62, General Code, the question should be put to the electorate in the following manner "Shall the sale of beer as defined in section 6212-63, General Code, be permitted within the district", etc.

COLUMBUS, OHIO, March 16, 1934.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads:

"The question has arisen as to whether a local option vote on the sale of 'beer' as defined in former G. C. 6212-63 and as now defined in Section 1 of House Bill No. 1 passed by the 90th General Assembly in Special Session on Dec. 22, 1933, approved by the Governor and filed in the office of the Secretary of State on Dec. 23, 1933, can be had in view of the fact that former G. C. 6212-63 was repealed by Section 63 of said House Bill No. 1 and the reading of G. C. 6212-62 which was not repealed.

I refer especially to that part of G. C. 6212-62 stating that the question shall be put to vote upon the following reading of the petition:

'Shall the sale of beer as defined in *Section 20 of substitute senate bill 346 enacted by the 90th General Assembly*, be permitted within the district, etc.'

I would appreciate your opinion as to whether local option was destroyed by the repeal of section 6212-63 and if not what wording should be substituted for the italicized wording above?"

During the regular session of the 90th General Assembly, there was enacted a law which regulated the manufacture, sale and distribution of beer not exceeding 3.2 per centum of alcohol by weight. See Amended Substitute Senate Bill No. 346, 115 O. L. 110.

The legislature, in that act, specifically provided the manner and method in which the question of whether the sale of beer should be permitted in incorporated municipalities and townships could be presented to the electors of those political units. Section 19 of that act provided that:

"The question of the sale of beer as defined in this act, by holders of C or D permits, may be presented to the qualified electors of an incorporated municipality, a residential district of a municipality as hereinafter defined, a township in which no incorporated municipality exists, or to the qualified electors of that part of a township outside of an incorporated municipality, for their adoption or rejection.

The question to be submitted shall be, Shall the sale of beer as defined in section 20 of substitute senate bill 346 enacted by the 90th General Assembly, be permitted within the district, municipality, township, or part of a township outside of the municipality?

The exact wording of the question and form of ballot as printed, shall be determined by the board of elections in the county wherein the election is held, subject to approval of the secretary of state of Ohio.

Upon presentation of a petition to the board of elections of the county wherein such election is sought to be held, requesting the holding of such election signed by qualified electors of the district concerned equal to thirty-five (35%) percent of the total votes cast for governor at the last regular state election in such incorporated municipality, residential district of a municipality, township in which no incorporated municipality exists, or of that part of a township outside of an incorporated municipality, the board of elections shall submit such question to the electors of the district concerned, at the first general election occurring subsequent to sixty (60) days after the filing of said petition.

If a majority of the electors voting on said question vote 'yes' thereon, the sale of beer as defined herein shall be subject only to the provisions of this act. If a majority of the electors voting on said question vote 'no' thereon, it shall be unlawful for any C or D permit holder to sell beer within the district concerned until at a subsequent election similarly called and held, a majority of the votes cast shall vote 'yes' on said issue.

No such election shall be held oftener than once in each three (3) years.

A residential district shall be held to mean any two or more con-

tiguous precincts in the residential portion of a municipality.” (Italics the writer’s.)

The word “beer” as used in section 19 of Amended Substitute Senate Bill No. 346 was defined in section 20 of that act as follows:

“For the purposes of this act, the term ‘beer’ as used in this act, shall include beer, lager beer, ale, stout and porter, and other brewed or fermented beverages containing one-half of one per centum, or more, of alcohol by volume but not more than 3.2 per centum of alcohol by weight.”

Pursuant to the provisions contained in section 342-1, General Code, the Attorney General, after the passage and enactment of Amended Substitute Senate Bill No. 346, designated section 19 of said act as section 6212-62 of the General Code, and section 20 of the act was designated as section 6212-63.

On the enactment of the Ohio Liquor Control Act (House Bill No. 1, enacted in the second special session of the 90th General Assembly), the word “beer” was defined in section 1 of said act (section 6064-1) as follows:

“‘Beer’ includes all beverages containing one-half of one per centum or more of alcohol by weight but not more than 3.2 per centum of alcohol by weight.”

In order to have uniformity as to the meaning of the word “beer” as used in the Ohio Liquor Control Act and in Amended Substitute Senate Bill No. 346, it was necessary for the legislature to amend section 20 of Amended Substitute Senate Bill No. 346 (section 6212-63). The legislature, in the enactment of the Ohio Liquor Control Act, used the sectional number given to section 20 of Amended Substitute Senate Bill No. 346 by the Attorney General instead of referring to it by the section number of the act.

Section 6212-63, as enacted in the Ohio Liquor Control Act, reads as follows:

“For the purposes of sections 6212-44 to 6212-49, both inclusive, of the General Code, sections 6212-49a to 6212-49t, both inclusive, of the General Code, sections 6212-50 to 6212-54, both inclusive, of the General Code, section 6212-54a of the General Code, sections 6212-55 to 6212-62, both inclusive, of the General Code and section 6212-64 of the General Code, the term ‘beer’ as used in any of said sections shall include beer, lager beer, ale, stout and porter, ale, and other brewed or fermented beverages containing one half of one percentum or more of alcohol by weight but not more than 3.2 per centum of alcohol by weight.”

It will be observed on a reading of that section that the legislature specifically provided that the word “beer” as used in section 6212-62, as enacted in Amended Substitute Senate Bill No. 346 in 115 O. L., page 118, was to include all malt beverages containing one-half of one per centum or more of alcohol by weight and not exceeding 3.2 per centum of alcohol by weight. The sole result of the amendment of section 6212-62 by section 6212-63 was to increase the minimum alcoholic content of beer. There is no language contained in section 6212-63, as enacted in the Ohio Liquor Control Act, which would indicate that

the legislature intended to do away with the privilege of determining by local option elections whether the sale of beer should be had in municipal corporations and townships. It is true that section 20 (section 6212-63), as enacted in Amended Substitute Senate Bill No. 346, was specifically repealed in section 63 of the Ohio Liquor Control Act. However, it must be borne in mind that the legislature reenacted the same section in the same act, and in section 6212-63, as enacted in the Ohio Liquor Control Act, it specifically provides that the word "beer", as used in section 6212-62, which, prior to being given a sectional number by the Attorney General, was section 19 of Amended Substitute Senate Bill No. 346, is to include malt beverages containing one-half of one per centum or more of alcohol by weight and not exceeding 3.2 per centum of alcohol by weight. There is no language in section 6212-63, as enacted in the Ohio Liquor Control Act, which would indicate that the legislature intended to repeal the local option provisions contained in section 6212-62.

The provisions of section 6212-62, as originally enacted in Amended Substitute Senate Bill No. 346, must be construed in the light of the amendment made by the legislature in that section by the specific provisions contained in section 6212-63, as enacted in the Ohio Liquor Control Act. The term "beer", as used in section 6212-62, having been expressly changed by the enactment of section 6212-63 in the Ohio Liquor Control Act, it follows that the provisions of the former statute must be read and construed in the light of the latter statute. To construe the provisions of section 6212-62 as having been repealed by the subsequent action of the legislature in specifically repealing section 20 of Amended Substitute Senate Bill No. 346 in section 63 of the Ohio Liquor Control Act would be violative of the rule of statutory construction that the repeal of statutes by implication is not favored. Furthermore, the action taken by the legislature in the Ohio Liquor Control Act in reference to section 20 of Amended Substitute Senate Bill No. 346 (section 6212-13) merely resulted in the amendment and not the permanent repeal of that section.

It is therefore my opinion that the local option provisions of section 19 (section 6212-62, General Code) of Amended Substitute Senate Bill No. 346 were not nullified by the repeal of section 20 (section 6212-63, General Code) of Amended Substitute Senate Bill No. 346 in section 63 of the Ohio Liquor Control Act, inasmuch as section 6212-63, General Code, was reenacted in the latter act.

In holding a local option election in reference to the sale of beer, as provided in section 6212-62, General Code, the question should be put to the electorate in the following manner "Shall the sale of beer as defined in section 6212-63, General Code, be permitted within the district," etc.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2382.

BURIAL—UNCLAIMED BODY OF INDIGENT BURIED AT EXPENSE OF VILLAGE—OPINIONS OF ATTORNEY GENERAL FOR 1932, VOL. III, P. 1387, AND VOL. II, P. 1928, FOLLOWED.

SYLLABUS:

Opinions reported in Opinions of the Attorney General for 1932, Volume III.