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LIQUOR—LOCAL OPTION—SALE OF SPIRITUOUS LIQUOR—ELECTORS OF TOWNSHIP VOTED EXCLUSIVE OF ANY MUNICIPAL CORPORATION OR PART THEREOF LOCATED IN TOWNSHIP — NOVEMBER, 1933 ELECTION — VOTED TO REPEAL ARTICLE XV SECTION 9 OF CONSTITUTION OF OHIO.

ALL QUESTIONS SET OUT IN SECTION 6064-33 G. C. SHALL BE SUBMITTED TO ELECTORS—COUNTY BOARD OF ELECTIONS WITHOUT AUTHORITY TO SUBMIT AT NEXT GENERAL ELECTION SOLE QUESTION, SALE OF SPIRITUOUS LIQUOR BY GLASS SHALL BE PERMITTED IN DISTRICT—PETITION BEARING SIGNATURES, SECTION 6064-32 G. C. FILED, SIXTY DAYS BEFORE ELECTION, NOTWITHSTANDING.

SYLLABUS:

Where the privilege of local option, with respect to the sale of spirituous liquor, is sought to be exercised by the electors of a township exclusive of any municipal corporation or part thereof therein located, in which a majority of the electors voting thereon at the November, 1933, election, voted for the repeal of then

section 9 of Article XV of the Constitution of Ohio, it is necessary to submit to such electors each and all of the questions set out in section 6064-33 of the General Code; and consequently the board of elections of the county wherein said district is located is without authority in law to submit to the electors of such district at the next general election the sole question of whether the sale of spirituous liquor by the glass shall be permitted therein, even though a petition bearing the number of signatures required by section 6064-32 of the General Code is filed with it sixty days before such election.

Columbus, Ohio, October 20, 1943.

Hon. Forrest D. Pfalzgraf, Prosecuting Attorney,
Woodsfield, Ohio.

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

“On August 31, 1943, the petitioners filed with the County Board of Elections a petition of which Exhibit ‘a’ is a copy. Between the 3rd day of September, 1943 and the 8th day of September, 1943, Mr. T. C., et al., examined the petition. And on September 8, 1943, the Board of Elections passed and approved said petition. And for your information there is no question presented in this case as to the required number of signatures.

In November 1933 as stated in the letter of T. C. the electors of said part of Malaga Township voted 59 for repeal and 55 against repeal of Section 9 of Article XV of the Constitution of the State of Ohio.

On October 4, 1943, T. C. filed the enclosed letter of which Exhibit ‘B’ is a copy thereof.

On October 6, 1943, and before a hearing at the Monroe County Election Board there was some additional oral argument other than the letter referred to presented to said Board for their consideration.

The Board has already had the ballots printed, which have been approved by the Secretary of State, and sent out ballots for absentee voters.

The Board of Elections of Monroe County, Ohio, now desire to know whether under the above facts and conditions set forth that they can proceed to hold an election in Malaga Township on the issue? The objection centers around the fact that the wrong form of petition was used inasmuch as part of the caption of the petition was incorrect.”

It is noted that the caption of the form of petition submitted by you reads:

“PETITION FOR ELECTION ON QUESTION OF THE SALE OF SPIRITUOUS LIQUOR BY THE GLASS

General Code, Section 6064-17

A Petition to Submit the Question of the Sale of Spirituous Liquor by the Glass in a Municipal Corporation or in Any Township Exclusive of Any Municipal Corporation or Part Thereof Therein, in which at the November, 1933, Election a Majority of the Electors Voting Thereon Voted Against the Repeal of Section 9 of Article XV of the Constitution of the State of Ohio.

To be filed with the Board of Elections of the County wherein such District is located, not less than SIXTY days previous to the date of the General Election at which the proposal is to be submitted.

TO THE BOARD OF ELECTIONS OF MONROE COUNTY,
OHIO:

We, the undersigned qualified electors of the district herein-after defined, respectively petition that you submit to the electors of such district, the question—

Shall the sale of spirituous liquor by the glass be permitted within the following described liquor control district—namely,

Malaga Township, Excepting, the Corporation (Herein set forth description, as, name of municipal corporation, or township or part thereof, wherein election is sought to be held) of Miltonsburg, and the Corporation of Jerusalem.”

With respect to the holding of an election on the question to be submitted thereat, section 6064-17 of the General Code, referred to in the above petition, contains the following provisions:

“No class D-3, class D-4 or class D-5 permit shall be issued in any municipal corporation, or in any township exclusive of any municipal corporation or part thereof therein, in which at the November, 1933, election a majority of the electors voting thereon voted against the repeal of section 9 of article XV of the Ohio constitution, unless the sale of spirituous liquor by the glass shall be authorized by a majority vote of the electors voting on the question in such municipal corporation or township or part

thereof, hereinafter in this section designated as the liquor control district at an election held pursuant to this section or by a majority vote of the electors of the liquor control district voting on question (d) at a special local option election held in such district pursuant to section 6064-33 of the General Code.

Upon the petition of fifteen per cent of the number of voters voting for governor at the last election in any such liquor control district, filed with the board of elections of the county in which such political subdivision or part thereof is located sixty days before a general election, such board of elections shall cause ballots to be prepared and hold an election at such general election upon the question of allowing spirituous liquor to be sold by the glass in such liquor control district."

From the above it is at once apparent that the petition filed with the Board of Elections of your county is one requesting the holding of an election for the purpose of determining whether intoxicating liquor may be lawfully sold by the glass in territory where such sale is forbidden by virtue of the vote therein in November, 1933, on the repeal of section 9 of Article XV of the Constitution.

Since a majority of the electors residing in the territory in question voted for the repeal of said section of the Constitution at the November, 1933, election, it is obvious that an improper petition was filed.

The provisions of law for bringing the question of the sale of intoxicating liquor before the electors of a district in which a majority of the electors voted for the repeal of section 9 of Article XV of the Constitution are set out in sections 6064-32 and 6064-33 of the General Code.

The former section deals with the number of signatures required on the petition, the time of holding election, notice, etc. The latter reads 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 _____?'

The board of elections to which the petition is presented shall cause ballots to be printed for use at such election in accordance with section 4785-103 of the General Code, excepting that, if such special election is held at the same time at which a general election is held, separate ballots shall be used therefor. *All of the foregoing questions shall be set forth on each ballot* and the board of elections shall cause to be inserted in each question the name or an accurate description of the district in which the election is to be held. Votes shall be cast in the manner provided in said section 4785-103 of the General Code." (Emphasis added.)

Since the above section provides that the five questions stated therein must be submitted to the electors, it is obvious that the single question called for on the petition filed in the instant case does not meet the requirements of law and consequently an election held on such single question is unauthorized.

You are therefore advised that, in my opinion, the Board of Elections of Monroe County may not lawfully proceed to hold an election in Malaga Township on the question set out in the petition submitted to it.

Respectfully,

THOMAS J. HERBERT,
Attorney General.