

may legally increase the salary of the superintendent or not, it is believed that the position of superintendent of a county children's home, not being a public office, but that of an employe, his salary may be increased or decreased as the trustees of the home shall determine.

Respectfully,

C. C. CRABBE,

Attorney General.

2762.

LIQUOR LEGALLY POSSESSED IN PRIVATE DWELLING MAY BE
MOVED BY OBTAINING FEDERAL PERMIT.

SYLLABUS:

A person having liquor legally in his bona fide private dwelling in Ohio may move same to his new or future dwelling, if he obtains a federal permit to do so.

COLUMBUS, OHIO, Sept. 8, 1925.

HON. B. F. McDONALD, *Prohibition Commissioner of Ohio, Columbus, Ohio.*

DEAR SIR:—On August 26th, I received the following letter from you:

"The federal prohibition department, I understand, have refused to grant permits for the transporting of liquors legally held in a private home to some new or future home, on the theory that they are issuing such permit in violation of the law of Ohio.

"I desire your opinion on the question as to whether or not liquors lawfully held in a private home can be transported to a new bona fide home or other legal destination under permit from the federal prohibition department."

Section 6212-15, General Code, reads as follows:

"No person shall, after the passage of this act, manufacture, sell, barter, transport, import, export, deliver, furnish, receive, give away, prescribe, possess, solicit or advertise any intoxicating liquors, except as authorized in this act. Liquor, and liquor preparations and compounds for non-beverage purposes, and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished, received, given away, possessed, prescribed, solicited and advertised, but only in accordance with the provisions of title II of the act of congress known as the 'National Prohibition Act,' passed October 28, 1919."

This section, standing by itself, would prevent the possession and transporting of liquors, except those for non-beverage purposes, even with a federal permit to do so, and would amount to a confiscation.

Paragraph 2 of section 6212-14, General Code, reads:

"The term 'given away' and the term 'possess' shall not apply to intoxicating liquor in a bona fide private dwelling."

This part of such section makes liquor, in the home before the constitutional amendment, legal the same as other bona fide property and needs no federal or other permit to perfect its legality.

The state of Ohio has no hand in the issuing of permits to possess or transport liquor, but leaves such matters to the federal government and says so in sections 6212-15 and 6212-15b, General Code. Section 6212-15b, General Code, reads:

"No person unless he first obtains a permit in conformity with the federal prohibition law in reference thereto, as may be required, to manufacture, use, sell, purchase or transport liquor, or to prescribe alcohol, or sell wine for sacramental purposes, or to manufacture liquor, or liquor preparations or compounds for non-beverage purposes, or to manufacture liquor, or liquor preparations or compounds for non-intoxicating beverage purposes, shall manufacture, use, sell, purchase or transport any liquor, or prescribe alcohol, or sell wine for sacramental purposes, or manufacture any liquor preparations or compounds for non-beverage purposes, or manufacture any liquor, or liquor preparations or compounds for non-intoxicating beverage purposes, respectively, provided, that this act shall not apply to ethyl alcohol lawfully denatured in accordance with formulas prescribed by the commissioner of internal revenue under the provisions of section 10 of title 111 of the national prohibition act or any amendments thereto."

This is a general section and was intended to cover cases not provided for by the latter part of section 6212-15, General Code. If not, it would have been unnecessary to pass this section. The legislature apparently intended that persons having liquor when the constitution was amended should continue to have such liquor as long as they did not use it illegally and certainly did not intend a direct or indirect confiscation of it by taking away the property rights of the owner in case he might change his place of abode.

Neither did they mean the particular building where the liquor was when the dry amendment took effect. "Bona fide private dwelling" is a broad term and was used in a broad sense when inserted in this law, and the property right follows the owner from one bona fide private dwelling to another.

Section 6212-15b, General Code, has the effect of saying that legal liquors may be moved if permits are applied for and issued by the federal government, and was apparently passed only to prevent the transporting of illegal liquors.

The law, if interpreted otherwise, would compel a man to either destroy his property, without due process of law, or leave it, if he moved, and such last act would subject the new tenant to a prosecution for illegal possession or make him liable for destroying the other man's property, if he destroyed it.

It is my opinion, therefore, that a person having liquor legally in his bona fide private dwelling in Ohio may move same to his new or future dwelling, if he obtains a federal permit to do so.

Respectfully,
C. C. CRABBE,
Attorney General.