

2606

LIQUOR CONTROL ACT—A-1, B-1 PERMITTEES MAY LAWFULLY DELIVER BEER AND MALT BEVERAGES—SECTION 6212-63 G. C.—HOME USE TO INDIVIDUALS RESIDING IN DISTRICT VOTED “DRY” IN LOCAL OPTION ELECTION HELD UNDER PROVISIONS OF SECTION 6212-62 G. C.

SYLLABUS:

A-1 and B-1 permittees under the liquor control act may lawfully deliver beer and malt beverages as defined in Section 6212-63, General Code, for home use to individuals residing in a district which has been voted “dry” in a local option election held under the provisions of Section 6212-62, General Code.

Columbus, Ohio, December 18, 1950

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

Dear Sir:

Your request for my opinion reads as follows:

“The holders of Class A-1 and Class B-1 permits located in ‘wet’ territory in the State of Ohio are often requested to deliver or sell beer or malt beverages for home consumption to individuals living in a territory which has voted ‘dry’ under the local option laws of Ohio. Specifically the following questions are presented:

“(1) Can such an A-1 or B-1 permittees deliver beer or malt beverages to an individual who lives in ‘dry’ territory, the order having previously been placed and previously paid for at the place of business of the A-1 or B-1 permittee?”

“(2) Can such an A-1 or B-1 permittees deliver beer or malt beverages to an individual living in ‘dry’ territory, the order having been placed by telephone and the merchandise being paid for by the individual upon delivery to him at his home?”

“(3) Can such an A-1 or B-1 permittee deliver beer or malt beverages to an individual living in ‘dry’ territory, the order having been placed by telephone and the merchandise being paid for subsequently by check mailed to the A-1 or B-1 permittee upon the rendition by said permittees of a regular monthly statement for merchandise sold and delivered?”

The statutory provisions relating to local option with reference to the sale of beer are found in Section 6212-62 General Code. This section reads in part as follows:

“The question of the sale of beer as defined in section 6212-63 of the General Code, 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 herein-after 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. * * *

“* * * 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 electors voting on said question shall vote ‘yes’ thereon. * * *

The term “beer” as used in the language above is defined in Section 6212-63 General Code, as follows:

“‘Beer’ defined. 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, sections 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 malt 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.”

For the purpose of this discussion I assume that your inquiry refers to beer and malt beverages as defined in Section 6212-63, General Code, and not to malt beverages as defined in Section 6064-1, General Code. I assume also that in the so-called “dry” territory which you mention, the sale of beer has been forbidden by a local option election held pursuant to Section 6212-62, General Code.

It is significant to observe that Section 6212-62, General Code, is applicable only to sales of beer by holders of C and D permits, and that no mention is made of sales of beer by holders of other classes of permits. One can readily conclude from this that sales of beer within the affected districts by holders of other classes of permits are not forbidden by a local option election held under authority of this section. It remains, therefore, to examine such other statutory provisions relating to the sale of intoxicants as must be considered in *pari materia* with this section to determine whether this conclusion is in harmony with them.

Under the provisions of Section 6064-15, General Code, the holder of an A-1 permit is authorized "to manufacture beer, ale and other malt liquor * * * and sell such products * * * for home use and to retail and wholesale permit holders * * *."

This same section authorizes B-1 permittees "to sell beer, ale, lager, stout and other malt liquors * * * for home use and to retail permit holders * * *."

Section 6064-38, General Code, is limited in its application to Sections 6064-1 to 6064-61, General Code. Accordingly, it defines the effect of a local option election held under the provisions of Section 6064-31 et seq., General Code, but has no application to an election held under the provisions of Section 6212-62, General Code. This section reads 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."

In this situation it cannot be said that sales in a district which has been voted "dry" in an election held under the provisions of Section 6212-62, General Code, are limited to those made by class B-3, E and G permittees.

Moreover, there appears to be a wholly logical reason for the legislative action in making the statute which authorizes local option elections, relating only to the sale of beer, applicable only to sales by retail permittees. It is commonly known that the chief abuses of liquor traffic which led some years ago to national prohibition were centered principally around the operation of places where retail sales were made, i. e., saloons; and that few, if any such abuses were found in connection with the sale of beer for home use. Accordingly, where the legislature perceived no evil in this field to be corrected it quite logically took no corrective action.

It is to be observed, in summary therefore, that (1) A-1 and B-1 permittees are not forbidden to make sales of beer in particular districts affected by a local option election held under Section 6212-62; (2) A-1 and B-1 permittees are authorized to sell beer for home use; and (3) Section 6064-38, General Code, is not applicable to local option elections relating to the sale of beer.

Since delivery of beer and malt beverages to the residence of purchasers for home use is an ordinary and customary practice in sales to them by A-1 and B-1 permittees, I readily conclude in view of the summary above that such permittees may lawfully make sales of these beverages in districts affected by a local option election held under the provisions of Section 6212-62, General Code.

Accordingly, in specific answer to your questions it is my opinion that A-1 and B-1 permittees under the liquor control act may lawfully deliver beer and malt beverages as defined in Section 6212-63, General Code, for home use to individuals residing in a district which has been voted "dry" in a local option election held under the provisions of Section 6212-62, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.