

4348.

LIQUOR CONTROL ACT—SECTIONS 6064-1, 6064-15, 6064-41, 6064-41a and 6212-48 BECAME EFFECTIVE WHEN APPROVED BY THE GOVERNOR.

**SYLLABUS:**

*Sections 6064-1, 6064-15, 6064-41, 6064-41a and 6212-48, General Code, as contained in Amended Substitute Senate Bill No. 2, passed by the 91st General Assembly May 23, 1935 and approved by the Governor June 5, 1935, are laws providing for tax levies as the phrase is used in Section 1d of Article II of the Constitution and went into effect when approved by the Governor.*

COLUMBUS, OHIO, June 21, 1935.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date is as follows:

“We request your immediate opinion regarding the effective date of the tax provisions of Amended Senate Bill No. 2, enacted by the Ninety-first General Assembly, signed by the Governor on June 5th and filed in the office of the Secretary of State on June 6, 1935.”

Amended Substitute Senate Bill No. 2, to which you refer is an act:

“To amend sections 154-3, 154-6, 6064-1, 6064-2, 6064-3, 6064-4, 6064-5, 6064-6, 6064-7, 6064-8, 6064-10, 6064-11, 6064-13, 6064-14, 6064-15, 6064-16, 6064-17, 6064-18, 6064-20, 6064-22, 6064-25, 6064-26, 6064-27, 6064-29, 6064-41, 6064-53, 6064-54, 6064-56, 6064-57, 6064-60, 6212-63, and 13393-1 of the General Code, and to enact supplemental sections 6064-1a, 6064-63, 6064-64, 6064-65, 6064-66, 6064-67, and sections 6212-48, 6212-48a, 6212-48b, 6212-48c, 6212-48d, 6212-48e, 6212-48f, and 6212-48g of the General Code, relating to the department of liquor control, the liquor control act and the traffic in beer and intoxicating liquor.”

Section 1d, Article II of the Constitution provides that:

“Laws providing for tax levies \* \* shall go into immediate effect.”

Such laws are not subject to referendum and are in effect when signed by the Governor. Section 16, Article II of the Constitution; *Foundry and Machine Co. vs. Power Co.*, 99 O. S. 429.

You inquire as to the effective date of “the tax provisions of Amended Senate Bill No. 2” and I assume therefore that your reference is to Sections 6064-41, 6064-41a and 6212-48, General Code, as contained in this act. These are tax levying sections and are unquestionably “laws providing for tax levies” as the phrase is used in Section 1d of Article II, supra, and not subject to referendum. Section 6064-41, General Code, provides:

“For the purpose of providing revenues for the support of the state, a tax

is hereby levied on the sale or distribution in Ohio of wine, excepting for known sacramental purposes, and prepared and bottled highballs, cocktails and other mixed beverages, at the rate of ten per centum of the retail selling price thereof. \* \* \*.”

Section 6064-41a, General Code, provides:

“For the purpose of providing revenue for the support of the state, a tax is hereby levied on the sale of beer, ale, porter, stout and other malt liquor beverages containing more than 3.2 per centum and not more than seven per centum of alcohol by weight in sealed bottles at the rate of three-fourths of one cent on each six ounces of liquid content or fractional part thereof. \* \* \*.”

Section 6212-48, General Code, provides:

“For the purpose of reimbursing the state for the expense of administering the provisions of the liquor control act and to provide revenues for the support of the state, a tax is hereby levied on the sale or distribution in Ohio of beer, ale, porter, stout and other malt beverages containing more than 3.2 per centum but not more than 7 per centum of alcohol by weight, whether in barrels or other containers (excepting in sealed bottles) at the rate of \$2.50 per barrel of 31 gallons to be paid by the purchase of stamps in the manner hereinafter provided. \* \* \*.”

Section 6064-1, General Code, as contained in this act, defines, among other things, “intoxicating liquor”, “beer”, “wine”, and “spirituous liquor” as the terms are used in the Liquor Control Act,—that is to say, this section sets forth the objects taxed by Sections 6064-41, 6064-41a and 6212-48, supra, with the exception of prepared and bottled highballs, cocktails and other mixed beverages. These prepared and bottled highballs, cocktails and other mixed beverages are defined in Section 6064-15, General Code, which section relates to the issuance of various classes of permits. It is my judgment, therefore, that Section 6064-15, General Code, is in the same category as Section 6064-1, General Code, in so far as the question here under consideration is concerned. Neither of these two sections containing definitions of the things taxed are subject to referendum under the reasoning and conclusion contained in Opinion No. 4311, rendered to your Commission on June 1 of this year.

Specifically answering your inquiry, it is my opinion that Sections 6064-1, 6064-15, 6064-41, 6064-41a and 6212-48, General Code, as contained in Amended Substitute Senate Bill No. 2, passed by the 91st General Assembly May 23, 1935 and approved by the Governor June 5, 1935, are laws providing for tax levies as the phrase is used in Section 1d of Article II of the Constitution and went into effect when approved by the Governor.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*