

**OPINION NO. 67-046****Syllabus:**

1. The sale of intoxicating liquor is prohibited on any first Tuesday after the first Monday in November in an area in which any election is held. Such election is a "general election" and such day is a general election day in such area to which the prohibition of Section 4301.22, Revised Code, applies.

2. The sale of intoxicating liquor is prohibited on any first Tuesday after the first Monday in May in an area in which an election is held for the purpose of nominating persons as candidates of political parties or for the purpose of electing persons as members of the controlling committees of political

parties or as delegates and alternates to conventions of political parties. Such election is a "primary election" and such day is a primary election day in such area to which the prohibition of Section 4301.22 (D), Revised Code, applies.

3. The sale of intoxicating liquor is not prohibited on any first Tuesday after the first Monday in May in an area in which there are contests neither for the purpose of nominating persons as candidates of political parties nor for the purpose of electing persons as members of the controlling committees of political parties nor as delegates or alternates to the conventions of political parties but in which state and local issues are being submitted. Such election is a "special election" and such day is a special election day in such area to which the prohibition of Section 4301.22 (D), Revised Code, does not apply.

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To: Donald D. Cook, Director, Ohio Dept. of Liquor Control, Columbus, Ohio  
By: William B. Saxbe, Attorney General, May 24, 1967

I have your request for my opinion wherein you inquire whether sales of intoxicating liquor at retail are prohibited on the first Tuesday after the first Monday in May in an area in which there are no contests for the purpose of nominating persons as candidates of political parties or for the purpose of electing persons as members of the controlling committees of political parties or as delegates and alternates to the conventions of political parties but in which state or local issues were being submitted.

For the purpose of this opinion there are three kinds of election in Ohio: general, primary and special. "General election", "special election" and "primary election" are defined in Section 3501.01, Revised Code. That section provides in pertinent part:

"(A) 'General election' means any election held on the first Tuesday after the first Monday in November.

\* \* \* \* \*

"(D) 'Special election' means any election other than the elections required to be regularly held on the day of a general or primary election, provided that a special election may also be held on the day of general or primary election.

"(E) 'Primary' or 'primary election' means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year."

An election in which there are contests neither for the purpose of nominating persons as candidates of political parties nor for the purpose of electing persons as members of the controlling committees of political parties nor as delegates and alternates to the conventions of political parties is not a primary election even though it is held on the same day on which a primary election is required to be held. The definitions in divisions (D) and (E) of Section 3501.01, supra, require that such election is a "special election."

Prior to amendment by the General Assembly in 1959, Section 4301.22, Revised Code, prohibited the sale of intoxicating liquor on any election day. Prior to such amendment Section 4301.22, supra, provided in pertinent part:

"(D) No sales of intoxicating liquor shall be made after two-thirty a.m. on Sunday or on election day between the hours of six a.m. and seven-thirty p.m.

" \* \* \* \* \* \* \* \* \* \*"  
(Emphasis added)

Section 4301.22, supra, as a result of such amendment and at present provides in pertinent part:

"(D) No sales of intoxicating liquor shall be made after two-thirty a.m. on Sunday or at retail on a primary or general election day between the hours of six a.m. and seven-thirty p.m.

" \* \* \* \* \* \* \* \* \* \*"  
(Emphasis added)

By this amendment the legislature changed the prohibition of Section 4301.22, supra, to make it applicable only to the specified elections, general and primary, and not to all elections as the antecedent language had. At present there is no prohibition of sales of intoxicating liquor on a "special election" day by Section 4301.22, supra. This conclusion is required by the application of the maxim of statutory interpretation, expressio unius est exclusio alterius, the legislature by naming two kinds of elections intended to exclude all others. In this conclusion I am supported by Opinion No. 2451, Opinions of the Attorney General for 1961, page 461, wherein my predecessor stated at page 463:

" \* \* \* \* \* \* \* \* \* \*"

"The ban contained in former section 4301.22, Revised Code, clearly applied to all elections, including municipal elections held on other than the first Tuesday after the first Monday in May. Now, however, said section specifies primary or general elections, and it appears to follow that the words 'primary election' should be interpreted to apply to only those elections defined in division (E) of Section 3501.01, Revised Code.

" \* \* \* \* \* \* \* \* \* \*"

It is of no significance in the consideration of your question that a primary election is held on the same day in other areas of the state, if, in fact, no primary election is held on such day in the area to which the application of Section 4301.22, supra, is being considered. In my Opinion No. 1231, Opinions of the Attorney General for 1957, page 634, I held that the application of Section 4301.22, supra, in a particular area was determined by what was occurring in such area. In that opinion I was asked to interpret the antecedent language of Section 4301.22, supra, which I have set out hereinbefore, which prohibited sales of intoxicating liquor on any election day. I concluded at page 637 that:

\* \* \* \* \*

\* \* \* \* \*in townships and precincts where the booths are not in fact open and no elections are actually held, because there are no contests in those particular areas, the sale of intoxicating liquor is not prohibited."

The reasoning of that opinion is equally applicable when the prohibition is of the sale of intoxicating liquor only on specified election days. Each area of the state must be examined to determine whether or not a primary or general election is being held therein.

It is, therefore, my opinion and you are hereby advised that:

1. The sale of intoxicating liquor is prohibited on any first Tuesday after the first Monday in November in an area in which any election is held. Such election is a "general election" and such day is a general election day in such area to which the prohibition of Section 4301.22, Revised Code, applies.
2. The sale of intoxicating liquor is prohibited on any first Tuesday after the first Monday in May in an area in which an election is held for the purpose of nominating persons as candidates of political parties or for the purpose of electing persons as members of the controlling committees of political parties or as delegates and alternates to conventions of political parties. Such election is a "primary election" and such day is a primary election day in such area to which the prohibition of Section 4301.22 (D), Revised Code, applies.
3. The sale of intoxicating liquor is not prohibited on any first Tuesday after the first Monday in May in an area in which there are contests neither for the purpose of nominating persons as candidates of political parties nor for the purpose of electing persons as members of the controlling committees of political parties nor as delegates or alternates to the conventions of political parties but in which state and local issues are being submitted. Such election is a "special election" and such day is a special election day in such area to which the prohibition of Section 4301.22 (D), Revised Code, does not apply.