

LIQUOR: In city elections on question of whether intoxicating liquor containing more than 5% alcohol by weight can be sold by the drink, at least a majority of the qualified voters must vote. Then a majority of those voting controls the election.

November 18, 1939

Hon. Walker Pierce
Supervisor of Liquor Control
Jefferson City, Missouri

Att: Wallace I. Bowers, Chief Clerk

Dear Sir:

We have received your recent letter which reads as follows:

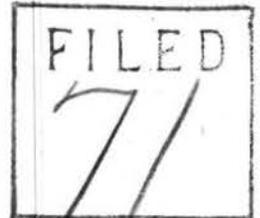
"We are in receipt of an inquiry pertaining to by the drink elections.

"Section 13-a states in brief that no license shall be issued for the sale of intoxicating liquor by the drink for retail for consumption on the premises where sold in any incorporated city having a population of less than 20,000 inhabitants, until the sale of such intoxicating liquor by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of said city.

"Section 44-a-4 states in brief that if a majority of the votes cast * * * .

"The question, as we see it, is this; if there are 600 qualified voters in the community, would 301 of them be required to vote as the majority of the qualified voters, all 301 voting for the sale, or - if 100 votes were cast and 51 are for the sale, would that be a majority of the votes cast as stated in Section 44-a-4.

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"In repeating, the question is simply this: Shall an incorporated city require the majority of the qualified voters to vote, or is a majority of the votes cast sufficient."

Section 13-a of the Liquor Laws, Laws of Missouri, Extra Session, 1933-34, page 82, provides that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of 5% by weight by the drink at retail for consumption on the premises in any incorporated city having a population of less than 20,000 inhabitants, until the sale of such intoxicating liquor by the drink has been "authorized by a vote of the majority of the qualified voters of said city".

Section 44-a-4 of the Liquor Laws, Laws of Missouri, Extra Session, 1933-34, page 93, in dealing with such elections, states in part:

"If a majority of the votes cast at such election be 'For the sale of intoxicating liquor, containing alcohol in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold', such intoxicating liquors may be sold under the provisions of existing laws * * * * *."

Section 44-a-5, Laws of Missouri, Extra Session, 1933-34, page 93, reads in part as follows:

"If a majority of the votes cast at any election held under the provisions of this act shall be 'Against the sale of intoxicating liquor containing alcohol in excess of five (5%) per cent by weight, by the drink at retail for consumption on the premises where sold,' it shall not be lawful * * * ."

It will be observed that the Legislature has made two requirements in such elections. First, it has prescribed that a majority of the qualified voters must vote on the question when it is submitted. Second, it has prescribed that "if a majority of the votes cast" are favorable, then intoxicating liquor containing alcohol in excess of 5% by weight may be sold by the drink in such incorporated areas. The Legislature has not required that a majority of the qualified voters shall vote either for or against the measure. It has merely required that a majority of the voters shall turn out at the polls and vote, either for or against the proposition, and then "if a majority of the votes cast" are favorable, the proposal will carry. On the other hand, if the majority of the qualified voters vote and if a majority of those actually voting cast their ballots against the proposition, then the matter will fail.

This appears to be the legislative intention.

CONCLUSION.

In elections held in cities and towns on the question of whether or not intoxicating liquor containing alcohol in excess of 5% by weight may be sold by the drink at retail for consumption on the premises where sold, it is the legislative requirement that at least a majority of the qualified voters of the city or town shall turn out and vote on the proposition. If a majority of those voting, that is, a majority of the majority, are favorable, then the proposition will carry. If a majority of those voting oppose, then the proposition will fail.

Respectfully submitted,

J.F. ALLEBACH
Assistant Attorney General

APPROVED By:

W.J. BURKE
(Acting) Attorney General

JFA:VAC