

OPINION
49-108

February 4, 1949 (OPINION)

LEGISLATURE

RE: Two-Thirds Vote Necessary

Your letter of February 4 addressed to the Attorney General has been received and contents of same have been noted.

You ask for the opinion of this office as to whether or not a two-thirds majority vote is necessary to pass Senate Bills 218 and 219.

Senate Bill 218 is an act imposing a separate and additional tax on all sales at wholesale of alcoholic beverages, other than malt beverages, containing more than four percent of alcohol by weight but less than twenty-four percent of alcohol by weight, an additional tax, separate and apart from all other taxes, equal to the sum of two cents per gallon, and upon all sales at wholesale of alcoholic beverages containing twenty-four percent or more of alcohol by weight, an additional tax, separate and apart from all other taxes, equal to the sum of eighty cents per gallon.

Senate Bill 219 imposes a tax upon all beer containing four percent or less of alcohol by weight sold in North Dakota to consumers, an additional tax, separate and apart from all other taxes, of ninety-three cents per barrel of 31 gallons or a pro rata proportion thereof in accordance with the size of the bulk container.

At the general election in November, 1936, an initiated measure was submitted to the people of the state known as the liquor control act. This act, among other things, provided as follows:

"Sec. 7. There shall be levied and collected on all alcohol and alcoholic beverages as defined therein and sold at retail the following excise taxes:

- (1) On all beer, malt and ale containing more than four percent alcohol by weight, the sum of eight cents per gallon.
- (2) On all light wines up to fourteen percent alcohol by weight, the sum of ten cents per gallon.
- (3) On all wines from fourteen to twenty-one percent of alcohol by weight, the sum of twenty cents per gallon.
- (4.) On all wines from twenty-one percent to twenty-four percent of alcohol by weight, the sum of forty cents per gallon.
- (5.) On all wines containing more than twenty-four percent of alcohol by weight, the sum of sixty cents per gallon.
- (6.) On all natural sparkling wines containing alcohol, the

sum of sixty cents per gallon.

(7.) On all artificial sparkling wines containing alcohol, the sum of thirty cents per gallon.

(8.) On all other liquors; liqueurs and cordials, the sum of sixty cents per gallon."

While Senate Bills 218 and 219 do not refer to the initiated measure of 1936 known as the liquor control act, nevertheless they are in effect amendments to said initiated measure in that they impose a tax in addition to the tax that was imposed by the initiated measure; they provide specifically that the taxes imposed shall be an additional tax separate and apart from all other taxes.

The fact that a legislative act does not contain language to the effect that it is an amendment of an initiated measure, nevertheless if in effect it does amend an initiated measure it will be so construed.

Our supreme court has passed directly on this question in the case of State ex rel. Strutz vs. Baker, 71 N.D. 153. In that case the court was considering the question as to whether or not chapter 147 of the Session Laws of 1939 was an amendment of the motor vehicle fuel tax act which by the terms of said fuel act was administered by the state auditor. Chapter 147 of the Session Laws of 1939 attempted to transfer the administration of said act to the state tax commissioner. Among other things, the supreme court said:

"Though this chapter 147 of the Session Laws of 1939 does not in express terms refer to the measure initiated in 1926, nevertheless, it is legislation on the same subject; changes the method of administration of the initiated law and some of its provisions; and to that extent amends certain portions of the initiated measure; or, if considered preferable to state it otherwise, it repeals those provisions not in harmony with the provisions of chapter 147 of the Session Laws of 1939, and substitutes therefor the provisions stated in the chapter."

In the same opinion the court quoted with approval from the case of De Motte v. De Motte, 364 Ill. 421, 4 N.E. (2nd) 960.

"The court was construing a statute which on its face appeared to be independent, but in fact merely introduced new features into the old act, and held such change to be an amendment, quoting with approval this rule set forth in Galpin V. Chicago, 269 Ill. 27, 36, 109 N.E. 713, 716, LRA 1917B, 176; 'even though an act professes to be an independent act and does not purport to amend any prior act, still if, in fact, it makes changes in an existing act by adding new provisions and mingling the new with the old on the same subject so as to make of the old and the new a connected piece of legislation covering the same subject, the latter act must be considered an amendment of the former'."

When the Legislature adopted the Revised Code of North Dakota of 1943 it recognized the fact that an initiated measure continues to be such

regardless of the fact that the Code was revised and adopted in its entirety. The legislative declaration upon this subject is found in Section 1-0225 and 1-0226 of the North Dakota Revised Code of 1943 and reads as follows:

"1-0225. CONTINUATIONS OF EXISTING STATUTES. The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments."

"1-0226. EFFECT OF REVISION UPON INITIATED MEASURES. Any provision of this code which was enacted as an initiated measure, or as a part of such a measure, notwithstanding the revision, shall remain in effect as an initiated provision and shall be subject to amendment, reenactment, or repeal only as provided by section 25 of the constitution of this state."

We are satisfied, therefore, that Senate Bills 218 and 219 are amendments to the liquor control act of 1936 and in order to become effective they must receive a two-thirds majority of all members elect in the House and in the Senate.

WALLACE E. WARNER

Attorney General