

**OPINION
49-117**

January 13, 1949 (OPINION)

LIQUOR

RE: Effect of Bonus Bill

Your letter of January 12 addressed to the Attorney General has been received and contents noted.

You request the opinion of this office relative to Senate Bill No. 1 which was introduced in the Senate of the thirty-first Legislative Assembly of the state of North Dakota. You refer particularly to the provisions in said bill which provide for a tax on the sale of beer and liquor and whether or not in case such bill becomes a law, the people of the state by legislative enactment or through the initiative may amend, repeal or modify the statutes now in force governing the sale of beer and liquor.

At the primary election held on June 29, 1948, the people of the state approved an amendment to the constitution of the state of North Dakota designated as Article 59. This amendment authorizes and empowers the Legislative Assembly of the state of North Dakota to issue, sell and deliver bonds of the state of North Dakota in the principal amount of not to exceed twenty-seven million dollars, the proceeds of which are to be used in the payment of adjusted compensation to North Dakota veterans of World War II on the basis of term of service and under such terms and conditions as the Legislative Assembly may prescribe.

Section 1 of Senate Bill No. 1 provides that, "Bonds to be issued under the provisions of this Act shall be known as state of North Dakota general obligation bonds, veterans of World War II adjusted compensation series."

Section 2 of said Act provides, "An issue of not to exceed twenty-seven million dollars general obligation bonds of the state of North Dakota is hereby authorized and directed under the conditions, in the manner and for the purpose stated in the amendment to the constitution of North Dakota, adopted by the thirtieth legislative assembly of the state of North Dakota ****."

Section 6 of said Act provides special revenue for payment of said bonds by additional taxes on the sale of liquor and reads as follows:

"Upon receipt of payment therefor, the industrial commission shall deliver to each purchaser of bonds issued under this Act, the bonds by him purchased, and upon delivery of such bonds the full faith and credit and unlimited taxing resources of the state of North Dakota shall stand pledged for the punctual payment of each and all of such bonds and the interest thereon to the lawful holder and owner thereof as the same becomes due and are presented for payment."

Your question upon which you desire our opinion is whether or not

under said Section 8, if it becomes a law, the people of the state or the legislature will have the right and power to amend, modify or even repeal present statutes governing the sale and traffic of beer and alcoholic beverages.

In the first place it should be observed that the tax proposed to be levied under section 8 is not a tax levied on beer or liquor, but is an excise tax levied on the transaction of the sale. That is, the tax is measured by the gallon but it is levied upon the sales. In other words, if there are no sales of intoxicating liquor there can be no tax levied under said section 8. The latter portion of said section 8 provides specifically that all such taxes shall be added to the sale price of merchandise sold to retailers and shall be collected as existing wholesale liquor transaction taxes. It is clear, therefore, that the tax ought to be imposed as an excise tax imposed upon the transaction or sale.

It should also be borne in mind that at the very outset, the law provides in section 1 that the bonds issued are general obligation bonds of the state of North Dakota.

Section 6 of said Act specifically pledges the full faith and credit and unlimited taxing resources of the state of North Dakota to the punctual payment of each and all the bonds issued under said Act and the interest thereon to the lawful holder or holders of such bonds.

Section 11 of said Act provides that in each year during the life of the Act and until the bonds issued thereunder are paid in full, the Industrial Commission of the state shall prepare a statement of the condition of the sinking fund for bonds issued and shall determine the annual tax necessary to pay the interest and principal of such bonds becoming due and maturing year by year. The annual tax so determined shall be certified by the Industrial Commission to the State Board of Equalization in ample time to permit such Board to make a levy for the current year, and such annual levy is made upon all the taxable property in the state of North Dakota, and is, therefore, a general tax levy. Said section further provides that the amount certified by the Industrial Commission and the amount of tax levied each year by the Board of Equalization shall be sufficient to maintain in the sinking fund balances adequate to pay all bonds maturing at least two years next following and all interest charges falling due within such time.

Section 182 of the State Constitution as amended by Article 42 of the Amendments, which would be applicable to this bond issue, provides among other things, "Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid."

It will be observed that the levy of the tax cannot be repealed until the bonds are paid in full with interest.

Applying this constitutional provision to the proposition here presented, it is clear that the tax as levied may not be repealed. In other words, so long as there are sales of beer and liquor, the tax on the transaction or sale must continue until the bonds are paid. But it must follow logically, however, that although the tax as levied may not be repealed, nevertheless the people would have the right to amend or repeal the laws governing the traffic in beer and liquor. The tax on beer and liquor transactions is merely an additional source of revenue to be placed in the sinking fund, but such tax may vary from year to year and under the provisions of section 11 it is the duty of the Industrial Commission to determine the amount which must be raised by a general tax levy.

It must also be borne in mind that the bonds to be issued are general obligation bonds of the state for the payment of which the full faith and credit and unlimited taxing resources of the state of North Dakota stand pledged.

It is clear that neither beer nor liquor is taxed for the purpose of creating a fund with which to pay the principal and interest of these bonds, nor are these commodities impressed with a lien for such purposes because as we have pointed out the tax is not on the commodity, but is an excise tax on the transaction and sale of these commodities so that if there is no sale, there would be no tax regardless of the quantity of these commodities that may be legally within the state.

The bonds proposed to be issued under the provision of this Act do not come within the so-called "special fund doctrine." The imposition of the excise tax levied on sales of beer and liquor is made for the purpose of lightening the general tax burden, but the taxable property of the state is at all times subject to a levy sufficient to provide a fund for the payment of the principal and interest of the bonds proposed to be issued under the provisions of this Act.

It is clear, of course, that the excise tax imposed upon the transactions and sales of these commodities may not be repealed during the period that the bonds are unpaid, but it is equally clear that the people may by either legislative enactment or through the initiative process modify, amend or repeal the laws now in force governing the regulation and sale of beer and liquor.

WALLACE E. WARNER

Attorney General