

**OPINION
49-126**

October 3, 1949 (OPINION)

LIQUOR

RE: Sunday Sales are Violation of Sabbath Breaking Act

I have your letter in which you state that a certain retail dealer in alcoholic beverages sold intoxicating beverages after the hour of midnight Saturday night and on Sunday morning. You ask for an opinion whether or not this is a violation of section 5-0509, subsection 4 of the 1947 supplement to the 1943 Revised Code, which states that the holder of a license shall not be authorized to sell or permit the consumption of beer or alcoholic beverages on any licensed premises, when such sale or consumption is prohibited by law. You also state in your letter that you have a local ordinance prohibiting the sale of intoxicating beverages on Sunday and Christmas Day and you also ask if this would come under the phrase prohibited by law, and if such could be tried under the foregoing section.

Section 12-2115 is the section pertaining to acts which constitute the Sabbath Breaking, in which the selling of alcoholic beverages is identical to all the things that are prohibited on the Sabbath.

Section 5-0113 sets forth the days upon which alcoholic beverages cannot be sold, given away, or disposed of, and these days are: Memorial Day, Good Friday, and on days of a general, special or local election.

Section 5-0123 prohibits the sale, giving away, or consuming alcoholic beverages between the hours of 1:00 a.m. and 8:00 a.m. Sales of alcoholic beverages on Sunday are a violation of the Sabbath Breaking Act and must be treated as such. A violation of a city or village ordinance must be tried as a violation of the ordinance and the penalty provided for such violation must be applied. Only if an ordinance is identical to a state law can another penalty be invoked but then the proceedings must be under the state law.

Section 5-0509 subsection 4 states: "When such sale or consumption is prohibited by law" refers to the violations or acts that constitute violations, as set forth in chapter 5-01 to chapter 5-06, inclusive.

In conclusion, it is my opinion that sales made on a Sunday are a violation of the Sabbath Breaking Act and must be tried as such.

WALLACE E. WARNER

Attorney General