

SENATE No. 369

The Commonwealth of Massachusetts.

SENATE, March 4, 1920.

The Committee on Legal Affairs, to which were referred the following bills:—Senate Nos. 262, 263, 189; House Nos. 798, 361, 673, 38, 925, 926, — begs leave to report in part as follows:—

The Committee interprets the vote at the last state election, under chapter eight hundred and nineteen of the acts of nineteen hundred and thirteen, known as the Public Opinion Law, as expressing a desire on the part of a majority of the voters of the Commonwealth for the manufacture and sale of a beverage with an alcoholic content considerably larger than the limit of one-half of one per cent fixed by Congress in the Volstead Act, so-called.

The Committee is in doubt, however, whether it would be wise or proper for this Legislature to pass any act authorizing the manufacture and sale of beverages with an alcoholic content of more than one-half of one per cent while the federal Volstead Act, so-called, is in force, because it would undoubtedly subject persons, acting in good faith under apparent authority of such legislation, to prosecution and probable conviction in the federal courts.

This Committee feels that the situation is one which calls for judicial advice or decision prior to any legislative enactment, and recommends that action by this Legislature be postponed on the above mentioned bills until the opinion of

the Justices of the Supreme Judicial Court of Massachusetts is obtained upon the questions of law set forth in the proposed order, a copy of which is hereto annexed.

WELLINGTON WELLS, *Chairman*.
SILAS D. REED.
GARDNER W. PEARSON.
JOHN J. WALSH.
ALBERT T. WALL.
BENJAMIN H. WOODSUM.
WALTER SHUEBRUK.
RICHARD B. COOLIDGE.
WILLIAM F. CRAIG.
COLEMAN SILBERT.
PRINCE H. TIRRELL.
JAMES E. CURRY.
HUGH J. LACEY.
LOUIS L. GREEN.
WILLIAM C. CROSSLEY.

SENATE, March 4, 1920.

Received, read and sent down for the information of the House.

HENRY D. COOLIDGE, *Clerk*.

Order offered by the Senator from Suffolk, Mr. Wells.

1 *Whereas*, There are pending before the general court
2 the following measures: Senate Bills 189, 262, 263; and
3 House Bills 38, 361, 673, 798, 925 and 926, copies of
4 which are hereto annexed, which define the alcoholic
5 content of liquors that may lawfully be sold within the
6 commonwealth or otherwise regulate the sale and trans-
7 portation of liquors, and

8 *Whereas*, Grave doubt exists as to the constitutional
9 power of the general court to enact said bills into law and
10 as to their enforceability, if so enacted, in view of the
11 enactment by the federal congress, under section two of
12 the eighteenth amendment to the federal constitution, of
13 legislation defining intoxicating liquors, and prescribing
14 the alcoholic content thereof, therefore be it

15 *Ordered*, That the opinions of the honorable the justices
16 of the supreme judicial court be required by the general
17 court on the following important questions of law: —

18 (1) May the law-making authority of this common-
19 wealth acting under section two of the eighteenth amend-
20 ment to the federal constitution, adopt its own definition
21 of what constitutes "intoxicating liquors" within the
22 meaning of the said amendment?

23 (2) In view of the enactment by congress of legisla-
24 tion defining intoxicating liquors and prescribing the
25 alcoholic content thereof, would legislation by this com-
26 monwealth adopting a different definition and prescribing
27 a different content be valid and constitutional?

28 (3) If valid and constitutional, would such legislation
29 by the commonwealth be operative and enforceable
30 during the operation of such federal legislation?

31 (4) To what extent may the purposes of the said peti-

32 tions and bills be effected by state legislation enacted
33 under section two of said amendment conferring con-
34 current powers upon congress and the states to enforce
35 the amendment by appropriate legislation?

36 (5) Would any of the said bills, if enacted into law,
37 be appropriate legislation, within the meaning of said
38 section two?

39 (6) May the law-making authority of the common-
40 wealth of Massachusetts authorize, and if so, to what
41 extent, the manufacture and sale of intoxicating liquors
42 to be used for other than beverage purposes?

43 (7) May the law-making authority of the common-
44 wealth of Massachusetts authorize the manufacture and
45 sale of a beverage containing any alcoholic content in
46 excess of one-half of one per cent which is not in fact
47 intoxicating?

48 (8) Upon the ratification of the said eighteenth amend-
49 ment, what power, if any, was reserved to the common-
50 wealth in relation to the subject matter of the amend-
51 ment?

52 (9) Is the act of congress enacted October twenty-
53 eighth, nineteen hundred and nineteen, known as the
54 "Volstead Act", a constitutional exercise of the power of
55 congress under section two of the eighteenth amendment?