

MAINE STATE LEGISLATURE

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DECEMBER SPECIAL SESSION

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 103

In Senate, Dec. 7, 1933.

Read and passed and 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Murchie of Washington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND
THIRTY-THREE

Whereas, it appears to the Senate of the Eighty-sixth Legislature that the following are important questions of law and the occasion a solemn one, and

Whereas, a bill was enacted by the Eighty-sixth Legislature amending sections one, three and six of chapter one hundred thirty-seven of the revised statutes of 1930, and

Whereas, the amendment to said section one of said chapter one hundred thirty-seven therein contained would strike out the word "fit" in the third line of said section to make the test of the illegal possession of any wort or mash the possession of the same "for distillation", and

Whereas, the amendment therein contained to said section three would have the effect of eliminating from the statutes all penalties for the transportation of liquor within the state except where liquor so transported was intended for illegal sale within the state, and

Whereas, the amendment therein contained to said section six would repeal all arbitrary definitions of intoxicating liquor, and

Whereas, under the provisions of Article XXXI of the Constitution of Maine the operation of said act was suspended and the same will be required by the force of said Constitution to be submitted to the voters of the State of Maine for approval or rejection hereafter, and

Whereas, said section six was in effect amended or modified by the enactment of an act entitled "An Act Relating to Malt Beverages and to Derive Revenue from the Manufacture and Sale Thereof" by said Eighty-sixth Legislature, and

Whereas, there has been introduced at the present special session of the Eighty-sixth Legislature an act entitled "An Act to Amend Chapter One Hundred Thirty-seven of the Revised Statutes by Repealing Those Por-

tions Designed for the Enforcement of Federal Prohibition", S. P. 39, which act is now pending for enactment and seeks to amend said sections one, three and six of said chapter ;

Ordered, that the justices of the Supreme Judicial Court are hereby requested to give to the Senate according to the provisions of the Constitution on this behalf their opinion on the following questions, to wit :

Question No. 1. Has the legislature the authority while the operation of a law enacted by it is suspended under the provisions of Article XXXI of the Constitution to amend or further amend the same?

Question No. 2. Will the act hereinbefore referred to, passed at the regular session of the Eighty-sixth Legislature and suspended through the operation of Article XXXI of the Constitution, have the effect on the date it becomes effective under said Article XXXI, if it is ratified by a majority of the electors, of superseding or amending any change in a section of the statutes affected by said act of superseding the action of the legislature at the present special session?

Question No. 3. Can the requirement of Article XXXI of the Constitution that an act passed by the legislature on which the referendum is invoked or submitted to the people for ratification be set aside by an act to be passed at this session repealing the law in question?

Question No. 4. Can the question required to be submitted to the people under the operation of said Article XXXI of the Constitution be modified by the legis'ature or by any official of the state so as to change the issue to be presented in accordance with legislative action subsequent to the passage of the original act and intervening before the date of its submission to the people?

Question No. 5. Has the ratification of the Twenty-first Amendment to the Constitution of the United States operated automatically to repeal the legislation heretofore enacted by Congress passed to enforce the provisions of the Eighteenth Amendment to the Constitution?

Question No. 6. If the adoption of the Twenty-first Amendment to the Constitution of the United States has operated to automatically repeal the Volstead Act, has that repeal operated to make the provisions of section three of chapter one hundred thirty-seven of the Revised Statutes of the State of Maine, absolute, or has said section been repealed or modified?

Question No. 7. Has the legislature the power, in the absence of a provision in the Constitution of the United States depriving intoxicating liquor of its status as property, to pass a law which will make it a penal offense to own or to transport intoxicating liquor within the State regardless of the question as to whether or not the same is intended for unlawful sale?