

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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. 185

In Senate, Dec. 15, 1933.

Ordered placed on file. 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

STATE OF MAINE

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

**Answers to Questions Propounded to the Justices of the Supreme Judicial
Court by the Senate of Maine.**

To the Honorable Senate of the State of Maine

The undersigned Justices of the Supreme Judicial Court, having considered the questions upon which their advisory opinions were requested by Senate Order of December 7, 1933, respectfully submit the following answers:

Question 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?

Answer 1. Article XXXI of the Constitution of Maine provides that "Upon written petition of not less than ten thousand electors, addressed to the governor and filed in the office of the secretary of state within ninety days after the recess of the legislature, requesting that one or more acts, bills, resolves or resolutions, or part or parts thereof passed by the legislature, but not then in effect by reason of the provisions of the preceding section, be referred to the people, such acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election. As soon as it appears that the effect of any act, bill, resolve, or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people . . ."

By reference to the Public Laws of 1933, we find that the enactment

referred to in the preamble to these questions appears therein as Chapter 226 and is entitled "An Act Relating to the Transportation of Intoxicating Liquor." The operation of this Act was suspended by petition in accordance with the provisions of Article XXXI of the Constitution and so proclaimed by the Governor of Maine, but no opportunity has yet been accorded to the electorate to approve or reject it. It has not, therefore, become effective nor has it been finally rendered invalid. The right of the voters to pass upon the act is absolute. It cannot be abridged by further action of the Legislature.

Question 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?

Answer 2. Should this Legislature enact a law inconsistent with the provisions of Chapter 226, P. L. 1933, and the latter act should be subsequently accepted by popular vote, it would become effective notwithstanding any act passed by the Legislature in the meantime.

Question 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?

Answer 3. After the referendum has been invoked and until the voters have acted thereunder, the subject matter of the referred bill is withdrawn from further consideration of the Legislature. It can neither amend nor repeal the act during that period.

Question 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 legislature 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?

Answer 4. We answer this question in the negative.

Question 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?

Answer 5. The ratification of the Twenty-first Amendment to the Constitution of the United States repealed the Eighteenth Amendment thereof

and automatically rendered inoperative such statutes or parts thereof as conflict with the Twenty-first Amendment or are unauthorized by its provisions.

Question 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?

Answer 6. In view of our answer to Question 3, we do not deem it necessary to answer this question.

Question 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?

Answer 7. We answer this question in the affirmative. The State has the right, not for the benefit of the individual, but for the best interest of society, to enact laws prohibiting the manufacture, sale, transportation, or possession of intoxicating liquor within its borders, regardless of whether or not it is intended for unlawful sale. This right is inherent, having its basis in the police power, and a necessary attribute of government. It does not depend upon the authority either of the State or the Federal Constitution.

The Supreme Court of the United States said, "It must now be regarded as settled that, on account of their well-known noxious qualities and the extraordinary evils shown by experience commonly to be consequent upon their use, a State has power absolutely to prohibit manufacture, gift, purchase, sale, or transportation of intoxicating liquors within its borders without violating the guarantees of the Fourteenth Amendment We further think it clearly follows from our numerous decisions upholding prohibition legislation that the right to hold intoxicating liquors for personal use is not one of those fundamental privileges of a citizen of the United States which no State may abridge." *Crane v. Campbell*, 245 U. S. Rep. 304.

Very respectfully,
 WILLIAM R. PATTANGALL
 CHARLES J. DUNN
 GUY H. STURGIS
 CHARLES P. BARNES
 SIDNEY St. F. THAXTER
 JAMES H. HUDSON

Dated December 13, 1933.