

# MAINE STATE LEGISLATURE

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DECEMBER SPECIAL SESSION

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

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**Legislative Document**

**No. 186**

In Senate, Dec. 15, 1933.

Ordered placed on file. 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

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**STATE OF MAINE**

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

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

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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.** Is it within the power of the Legislature to pass an act authorizing the sale of beverages contrary to the express provision of the Constitution as it now stands, to become effective on condition that a change in the Constitution proposed by the Legislature concurrently with the passage of such Act and submitted to the electors for adoption shall be so adopted?

**Answer 1.** Article XXVI of the Amendments to the Constitution of Maine embodies the existing policy of the State in regard to the manufacture and sale of intoxicating liquors within its limits. The manufacture of intoxicating liquors, (not including cider), and selling, or keeping such liquors for sale, are, in the words of the Article, "forever prohibited." Then follows, in brief, this exception: Intoxicating liquors may be sold, under such regulations as the Legislature may provide, "for medicinal and mechanical purposes and the arts." A provision with reference to selling cider is not of instant relevance. The Amendment makes it compulsory up-

on the Legislature to "enact laws with suitable penalties for the suppression of the manufacture, sale and keeping for sale of intoxicating liquors," with the aforesaid exception.

The Constitutional Amendment limits or restrains legislative power. In other words, the adoption of the Amendment took away powers, otherwise possessed by the Legislature, upon the subject of intoxicating liquors. Legislative power is measured by limitation, not by grant. Such power is absolute and all embracing except as expressly, or by necessary implication, restricted by the Constitution.

As respects authorizing the selling of intoxicating liquors, the Legislature can only make laws regulating the details of the purposes which the Amendment specifies; that is to say, "for medicinal and mechanical purposes and the arts." In other respects, there is, by necessary implication, absolute and complete inhibition on legislative action. The language is that of exclusion. Where, as here, the Legislature is subservient to a constitutional prohibition, there may not be the enactment of legislation, even conditionally.

The question, whether the present Legislature may authorize the sale of intoxicating liquors as beverages, when and after an amendment to the Constitution shall make such sales permissible, is answered in the negative.

**Question 2.** If such an enactment is not within the power of the Legislature, is it within the power of the Legislature to pass an enabling act submitting to the electors for their adoption or rejection, concurrently with their adoption or rejection of a Constitutional Amendment which will eliminate the prohibition against such legislation, a similar act to be effective only in case both Act and Amendment are so adopted?

**Answer 2.** Unless and until changed by formal amendment, present provisions of the Constitution bind not only the Legislature but the people. This question is, therefore, answered in the negative.

Very respectfully,

W. R. PATTANGALL  
CHARLES J. DUNN  
GUY H. STURGIS  
CHARLES P. BARNES  
SIDNEY St. F. THAXTER  
JAMES H. HUDSON

Dated December 13th, 1933.