

erendum April, 1957; 1957 c. 610; Stats. 1957 s. 175.095; 1965 c. 6.

175.10 History: 1939 c. 357, 487, 500; Stats. 1939 s. 348.56; 1955 c. 696 s. 288; Stats. 1955 s. 175.10.

Ch. 357, Laws 1939, as amended, does not prohibit counties from disposing of salvage materials to employes, nor does it prohibit the use of county road equipment for private individuals or other municipalities, nor the performance for others of work in the county machine shop. A county may not sell gas, oil or gravel to its employes. 28 Atty. Gen. 615.

Various questions arising under this section are dealt with in 28 Atty. Gen. 713.

175.15 History: 1935 c. 257; Stats. 1935 s. 352.48; 1955 c. 696 s. 303; Stats. 1955 s. 175.15.

See note to 62.11 (5), citing *Fox v. Racine*, 225 W 542, 275 NW 513.

175.20 History: 1923 c. 222 s. 1; Stats. 1923 s. 4599m; 1925 c. 4; Stats. 1925 s. 351.57; Spl. S. 1933 c. 4; 1939 c. 107; 1955 c. 696 s. 300; Stats. 1955 s. 175.20; 1969 c. 271.

On exercises of police power see notes to sec. 1, art. I.

One who rents a licensed dance hall for use in conducting a public dance must obtain a permit to hold such dance and pay an inspection fee. Certain violations of the dance hall ordinance may be prosecuted in the name of the state; others should be prosecuted in the name of the county. 13 Atty. Gen. 49.

A hotel furnishing music and permitting its guests to dance after dinner comes within the statute requiring a license for a public dance. 14 Atty. Gen. 500.

A public dance within the meaning of this section is one to which the public generally is admitted without discrimination and admission to which is not based upon personal selection or invitation. A rural tavern having a small room where music is played for entertainment of tavern patrons and where some dancing is occasionally permitted does not come under this section so long as dancing is a mere incident of a general tavern business. 23 Atty. Gen. 478.

State law does not prohibit the issuance of a fermented malt beverage or intoxicating liquor license for dance hall premises. 23 Atty. Gen. 536.

A lake resort hotel consisting of tavern, rooms, cabins, boats, etc., that permits dancing, furnishes an orchestra to play for entertainment of guests and all others who wish to appear, and makes no charges for attending such dances, is not required to have a license under a county ordinance which defines "public dance" as one where dancing is "principal entertainment" and some charge is made or ticket received for attendance or in payment for food or other service. 27 Atty. Gen. 434.

A tavern furnishing orchestra music and permitting 30 to 40 couples to dance therein in space provided for that purpose is conducting a public dance within 351.57 and 59.08 (9), Stats. 1937. 27 Atty. Gen. 439.

The phrase "17 years of age or less" as used in 175.20 (2), Stats. 1951, excludes children who have passed the 17th anniversary of the date of their birth. 41 Atty. Gen. 390.

175.25 History: 1939 c. 354; Stats. 1939 s. 348.427; 1955 c. 696 s. 271; Stats. 1955 s. 175.25.

CHAPTER 176.

Intoxicating Liquors.

On inherent rights, equality and exercises of police power see notes to sec. 1, art. I.

Liability-without-fault criminal statutes—their relation to major developments in contemporary economic and social policy. Remington, Robinson and Zick, 1956 WLR 625.

176.01 History: Spl. S. 1933 c. 13; 1935 c. 187 s. 1, 2; Stats. 1935 s. 176.01; 1937 c. 346; 1945 c. 392; 1947 c. 362 s. 2; 1949 c. 17 s. 20; 1951 c. 400; 1965 c. 465, 617, 625; 1967 c. 276 s. 39; 1969 c. 87, 255; 1969 c. 276 s. 585 (7).

Intoxicating liquor laws of 1933, enacted in the regular and special sessions, are interpreted in 23 Atty. Gen. 130 and 191.

Warehouse receipts covering intoxicating liquor can be sold by Wisconsin manufacturers, rectifiers and wholesalers to other Wisconsin manufacturers, rectifiers, wholesalers and retailers but not to the general public. 23 Atty. Gen. 637.

Fermented malt beverages containing 7½% of alcohol by volume or 6.01% by weight are not taxable as intoxicating liquors under ch. 139, but sale of such beverages is subject to provisions of ch. 176, regulating sale of intoxicating liquors. 32 Atty. Gen. 48.

176.03 History: Spl. S. 1933 c. 14 s. 2; 1935 c. 187 s. 2; 1935 c. 217; Stats. 1935 s. 139.30; 1937 c. 346, 418; 1949 c. 17 s. 23; 1963 c. 141, 207; 1963 c. 459 s. 41; Stats. 1963 s. 176.03; 1969 c. 276 s. 590 (2), (3).

Warehouse receipts covering intoxicating liquor can be sold by an out-of-state manufacturer or rectifier only to Wisconsin manufacturers, rectifiers and wholesalers but not to Wisconsin retailers or the general public. 23 Atty. Gen. 637.

176.04 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.04; 1947 c. 123; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2).

Where an accused is charged with having unlawfully sold intoxicating liquor at a particular place, the state must show the presence of the accused where the alleged offense was committed; and testimony that he was elsewhere is rebuttal. On the whole case, including the question of alibi, the burden is on the state to prove the guilt of the accused beyond a reasonable doubt, the accused not being required to establish his alibi beyond a reasonable doubt. *Roen v. State*, 182 W 515, 196 NW 825.

176.041 History: 1935 c. 187; Stats. 1935 s. 176.041; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2).

176.05 History: Spl. S. 1933 c. 13; 1935 c. 46, 187, 217, 241, 249, 276, 292, 411, 473, 486, 503; Stats. 1935 s. 176.05; 1937 c. 292, 390; 1939 c. 101, 376, 397, 460; 1939 c. 515 s. 9; 1941 c. 42; 1943 c. 184, 331, 421, 455; 1945 c. 392; 1947 c. 161, 348; 1947 c. 362 s. 2; 1947 c. 483, 564; Stats. 1947 s. 176.05, 176.121 (4); 1949 c. 17 s. 23; 1949 c. 115; 1951 c. 104, 210, 227, 589, 734; 1953 c. 6, 156, 358, 373, 540, 622, 631,

676; 1955 c. 10, 88; 1957 c. 136, 233, 604, 677; 1959 c. 19; Stats. 1959 s. 176.05; 1961 c. 31, 368, 402, 465; 1961 c. 622 s. 52; 1961 c. 660; 1963 c. 207, 263, 276, 355, 383, 462; 1963 c. 506 s. 8; 1965 c. 433, 549, 606; 1967 c. 56, 74; 1969 c. 97, 241; 1969 c. 276 ss. 496, 497, 585 (7), (8), 590 (2), (3); 1969 c. 320; 1969 c. 366 ss. 114, 117 (2) (b).

Editor's Note: 176.05, Stats. 1969, makes provision for the issuing of two classes of licenses, designated as "Class A" and "Class B" licenses, for the sale of intoxicating liquors at retail. The limitations surrounding these licenses are set out in 176.05 (2). 66.054, Stats. 1969, relating to the issuing of licenses for the sale of fermented malt beverages, prescribes somewhat different designations.

1. Authority to grant licenses.
2. Public warehouse liquor permit.
3. Winery license.
4. Kinds of licenses.
5. Limitation to same person.
6. Federal stamp tax.
7. License fees.
8. Licenses for country clubs.
9. Form of application.
10. Semiannual licenses.
11. License subject to rules on sanitation.
12. Annual license meetings.
13. To whom not granted.
14. Schools, churches and hospitals.
15. Restrictions on "Class B" licenses.
16. Restrictions on licensed premises.
17. License posted.
18. Licenses to corporations.
19. Transfers of licenses.
20. Quotas of licenses.

1. Authority to Grant Licenses.

The right to hold a liquor license is a privilege that inures to the benefit of the licensee as determined by the exercise of the discretionary authority vested in the licensing board. An agreement between a lessor and the licensee as to a liquor license cannot affect the jurisdiction conferred upon a municipality by statute to act upon license transfers. There exists no specific provision granting the right of judicial review under ch. 176 to an applicant who has been denied a license by a village board. *Marquette S. & L. Asso. v. Twin Lakes*, 38 W (2d) 310, 156 NW (2d) 425.

The broad and sweeping authority conferred upon boards and common councils to grant liquor licenses under the conditions and restrictions contained in ch. 176, Stats. 1965, implemented by a city ordinance providing that a license should not be renewed without a reinspection of the premises and a report such as is required in an original application, conferred ample authority upon the common council in the instant case to consider in exercising its discretion the moral character, financial responsibility of the applicant, the appropriateness of the location and of the premises proposed. *State ex rel. Ruffalo v. Common Council*, 38 W (2d) 518, 157 NW (2d) 568.

Town and village boards and city councils may issue licenses to sell liquor in all instances except where the community has voted dry. 23 Atty. Gen. 152.

Many questions calling for construction of

liquor laws (66.05 (10), ch. 139 and ch. 176, Stats. 1933) are answered in 23 Atty. Gen. 130 and 191.

176.05 (1), Stats. 1937, does not apply to town board members indirectly engaged in the sale of beer. 27 Atty. Gen. 798.

2. Public Warehouse Liquor Permit.

Under 176.05 (1d), relating to public warehouse liquor permits, the state treasurer is not required to determine that the applicant for such a permit has been first licensed and bonded under 100.13, the general statute relating to public warehousemen, the administration of which is under the jurisdiction of the department of agriculture. 37 Atty. Gen. 458.

3. Winery License.

A winery license under 176.05 (1f), Stats. 1941, authorizes holders to rectify wine without also having a rectifier's permit under 176.05 (1a). 32 Atty. Gen. 28.

4. Kinds of Licenses.

Wisconsin cases construing the term "premises" as used in former state prohibition statutes apply with equal logic to present statutes relating to issuance of licenses for the sale of fermented malt beverages and intoxicating liquors. The test as to whether a particular room or space comes within the term rests upon accessibility and dominion as disclosed by particular facts in each case. 27 Atty. Gen. 702.

An intoxicating liquor dealer operating under a "Class A" retail license only may not accept an order for intoxicating liquor from a hotel guest, who is away from the licensed premises, and deliver liquor to such guest where the sale of such liquor is not consummated on the dealer's licensed premises. 28 Atty. Gen. 251.

Liquor may be sold on any part of the premises as described in the liquor license. 37 Atty. Gen. 534.

5. Limitation to Same Person.

An agreement for a limited partnership for the operation of a tavern, dining-room and bowling alley under which plaintiff, a limited and inactive partner, was to advance money and receive a share of profits, and pursuant to which plaintiff's interest was not disclosed in the application for a liquor license, is illegal and unenforceable under 176.05 (3). *Sponholz v. Meyer*, 270 W 288, 70 NW (2d) 619.

The duty of determining whether an applicant for a "Class A" or "Class B" intoxicating liquor license is acting as an agent for or is in the employ of another rests primarily upon local licensing authorities. Under 176.05 (13), Stats. 1935, the state treasurer is limited to a determination that the character, record and reputation of the proposed agent are satisfactory. 25 Atty. Gen. 369.

This section prohibits issuance of a retail "Class A" or "Class B" license for the sale of intoxicating liquors to any person acting as an agent or in the employ of another. 27 Atty. Gen. 567.

6. Federal Stamp Tax.

176.05 (3a), Stats. 1945, requires only that the federal special tax stamp therein referred to be obtained before a license for sale of in-

toxicating liquor can be issued. It does not require that such stamp be obtained before the application for a license is filed. 35 Atty. Gen. 39.

7. License Fees.

"Smaller fee" as used in 176.05 (4), Stats. 1945, means smaller than the minimum established by a municipal governing body for a given class, provided that the minimum is higher than the statutory minimum. 35 Atty. Gen. 206.

8. Licenses for Country Clubs.

The authority to issue liquor licenses to country clubs under 176.05 (4a) is not limited by 176.05 (21), Stats. 1939. Six-month licenses issued under 176.05 (6) stand on the same footing as annual licenses so far as 176.05 (21) is concerned. 28 Atty. Gen. 618.

9. Form of Application.

176.05 (5) does not mean that on a license renewal application only events occurring since the original application need be included. All information required in the original application is pertinent to the renewal. State ex rel. Boroo v. Town Board, 10 W (2d) 153, 102 NW (2d) 238.

10. Semiannual Licenses.

Licenses to sell liquor for a period of 6 months beginning June 1 and ending December 1 may be granted under the provisions of the second sentence of 176.05 (6), Stats. 1937. Licenses may be granted under the first sentence for one year or any shorter period of time but must expire on June 30 following issuance. 27 Atty. Gen. 352.

11. License Subject to Rules on Sanitation.

A "Class B" liquor license issued in complete disregard of the jurisdictional requirement of 176.05 (6a), Stats. 1949, that no license shall be issued unless the premises conform to the rules and regulations of the state board of health governing sanitation in restaurants, is void under 176.05 (5). 39 Atty. Gen. 244.

12. Annual License Meetings.

Where no other tavern existed in a neighborhood where an applicant for a retail liquor license proposed to establish a tavern, and the neighborhood was a residential one with places of amusement for children and others near the proposed location, the refusal of the city common council after due consideration to grant a license because of the character of the surroundings was not arbitrary, but was a proper exercise of the council's discretion. State ex rel. Higgins v. Racine, 220 W 107, 264 NW 490.

The matter of granting retail liquor licenses is within the discretion of the licensing authority, and, while it may not act capriciously or arbitrarily, it may grant or refuse licenses in the exercise of a sound discretion. If 176.05 (8) deprives a city council of power to deny an application after June 15, it likewise deprives the council of power to issue a license after June 15, and hence it does not entitle an applicant to compel the council to issue a license where the council did not deny the application

until after June 15. Rawn v. Superior, 242 W 632, 9 NW (2d) 87.

By requiring in 176.05 (8) that the reason for rejection of a renewal application be included in the clerk's minutes, the legislature did not intend to limit the grounds for denial to those stated in 176.05 (9) and (9m), but intended to enable the courts to review the reasons and determine whether the refusal was an abuse of discretion. A refusal because of failure to disclose an old conviction in another state is not an abuse. State ex rel. Boroo v. Town Board, 10 W (2d) 153, 102 NW (2d) 238.

In the absence of a referendum election a city council may by ordinance determine that intoxicating liquor licenses issued by the city shall be of "Class B" only. 25 Atty. Gen. 373.

13. To Whom Not Granted.

Although a partnership may be granted a license to operate a tavern and sell intoxicating liquors provided the names of the partners are disclosed in both the application for and in the license granted, a partnership may not obtain a license for the sale of intoxicating liquors in the name of one of the partners, and there is no legal sanction for a so-called silent partner's engaging in a tavern business in which intoxicating liquors are sold under a license issued in the name of one of the partners. Brill v. Salzwedel, 235 W 551, 292 NW 908.

A town board's denial of a renewal liquor license, for the stated reasons that the applicant had been convicted on a felony charge in Michigan and had failed to disclose the same in response to questions on the application form, was not arbitrary or capricious so as to constitute an abuse of discretion, such reasons having a direct bearing on whether the applicant was a proper person to be granted a license. State ex rel. Boroo v. Town Board, 10 W (2d) 153, 102 NW (2d) 238.

A member of a town or village board may have a liquor license. 24 Atty. Gen. 292.

Under 176.05 (9), Stats. 1937, a license or permit may be granted to a Wisconsin corporation only when all officers and directors of such corporation can satisfy requirements set forth for an individual desiring a license or permit. (23 Atty. Gen. 191, 203, adhered to.) 27 Atty. Gen. 567.

14. Schools, Churches and Hospitals.

Under 176.05 (9m), Stats. 1947, premises licensed for the sale of intoxicating liquor on June 30, 1947, may continue to be so licensed where less than 300 feet from the school, church or hospital notwithstanding the sale of liquor in said premises was discontinued for some time after June 30, 1947. 37 Atty. Gen. 481.

176.05 (9m), Stats. 1947, does not prevent the transfer of a barroom from one part of licensed premises to another where the new location has been part of the licensed premises prior to June 30, 1947. Transfer proceedings under 176.05 (14) are unnecessary in such cases. 38 Atty. Gen. 10.

Tavern premises located within 300 feet of a church, school or hospital may not be enlarged to extend upon an adjacent lot under the

"grandfather rights" conferred by 176.05 (9m), Stats. 1967. 57 Atty. Gen. 99.

15. Restrictions on "Class B" Licenses.

See note to 66.054, on Class "B" retailers licenses, citing State ex rel. Torres v. Krawczak, 217 W 593, 259 NW 607.

Where an election resulted in voting beer out and voting intoxicating liquors in, 176.05 (10) (b), Stats. 1941, prohibits issuing a "Class B" liquor license. 30 Atty. Gen. 351.

A Class "B" fermented malt beverage license issued under 66.054 (5) (b) and (8), Stats. 1953, is separate from a "Class B" intoxicating liquor license issued under 176.05, and the liquor license may be voluntarily surrendered by the licensee without surrender of the malt beverage license. There is no provision for issuing a "combination license" covering both liquor and malt beverages. 44 Atty. Gen. 40.

16. Restrictions on Licensed Premises.

When a tavern keeper leaves home with no intention of returning, his wife may not operate the tavern under a license issued in his name. 24 Atty. Gen. 138.

17. License Posted.

Where a liquor license covers an entire building as the premises and the licensee dispenses liquor in several places on the premises the license need be posted as provided in 176.05 (12), Stats. 1947, only in the room where the principal part of the business is carried on. 36 Atty. Gen. 414.

18. Licenses to Corporations.

A wholesale intoxicating liquor permit may not be issued to a foreign corporation under this section. 34 Atty. Gen. 309.

19. Transfers of Licenses.

The denial of a transfer of a retail "Class B" liquor license to another location, on the ground that such transfer would entail moving from a business district to an outlying district, necessitating daily police patrol, was within the discretion of the village board under 176.05 (14). State ex rel. Edge v. Meyer, 249 W 154, 23 NW (2d) 599.

An agreement between the owner of tavern premises and a tenant, who had a retail Class B combination beer and liquor license for the premises in a city in which the maximum permissible number of "Class B" liquor licenses was filled by the granting of the tenant's license, that at the expiration of the lease the owner of the premises could again operate her tavern without any interference from the tenant with respect to obtaining a license, did not give the owner of the premises any cause of action to enjoin the common council from transferring the tenant's existing license to another location, since any agreement between her and her tenant could not affect the jurisdiction conferred on the common council by 176.05 (14) to act on license transfers. Smith v. Whitewater, 251 W 306, 29 NW (2d) 33.

A liquor license cannot be the subject of transfer or of contract which would limit or control the discretionary authority of a licensing board. State ex rel. Ruffalo v. Common Council, 38 W (2d) 518, 157 NW (2d) 568.

When a tavern keeper absconds his license

may be revoked by a town board and a new license issued to his wife for the same premises. 24 Atty. Gen. 264.

20. Quotas of Licenses.

The town board may limit the number of retail licenses and when it has so limited the number no applicant for a license has a vested right to have his application considered in the order in which the applications are filed. Bjordal v. Town Board of Delavan, 230 W 543, 284 NW 534.

The number of retail "Class B" liquor licenses issued by a municipality to clubs as defined in 176.01 (8) must be included in determining the total number of licenses of that class which may be issued under 176.05 (21). Such requirement cannot be avoided by issuing to clubs so called "combination" Class B licenses granting the right to sell fermented malt beverages as well as intoxicating liquors. Retail "Class B" liquor licenses issued to such clubs are not a special kind of license different from retail "Class B" liquor licenses issued to other classes of eligible applicants. Where several liquor licenses are granted by one action with the result that it is impossible to determine which was granted first, and the action results in the issuance of licenses in excess of the quota permitted by law, all are void. State ex rel. Martin v. Barrett, 248 W 621, 22 NW (2d) 663.

As used in 176.05 (21), the word "inhabitant" refers to one residing in the particular town, city, or village in which inhabitants are to be counted for license-limitation purposes, and does not include summer vacationists in the vicinity of the city who customarily patronize places of business in that city during their vacation periods. Smith v. Whitewater, 251 W 313, 29 NW (2d) 37 (1947).

176.05 (21) prohibits issuance of more than one "Class B" retail liquor license for every 500 inhabitants unless more than that number were in effect on August 27, 1939, in which case the number in force on that day shall constitute the limit until such time as it is less than the statutory proportion to population. Excess licenses under 176.05 (21) are not limited to those individuals and locations licensed on August 27, 1939; the licenses may be either renewals or new licenses. 28 Atty. Gen. 618; 29 Atty. Gen. 295.

For the purpose of determining the number of inhabitants as a basis for issuing liquor licenses under 176.05 (21) (a), inmates of charitable and penal institutions may not be counted irrespective of whether such institution is located in a city, village or town. 34 Atty. Gen. 341.

Licenses issued pursuant to 176.05 (4a) are not included for purposes of determining the number of licenses in force when the limitation law, 176.05 (21) (a), went into effect. 37 Atty. Gen. 516.

See note to 66.054, on wholesalers' licenses, citing 40 Atty. Gen. 146.

Where territory of a town, containing no "Class B" liquor taverns, is annexed to a city, this affects the quota of neither municipality as determined by 176.05 (21). 41 Atty. Gen. 115.

176.05 (21) (d), relating to liquor license quotas, is construed in 53 Atty. Gen. 201.

176.051 History: 1935 c. 187; Stats. 1935 s. 176.051; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2).

In a prosecution for manufacturing, selling and aiding and abetting in the manufacture and sale of illicit intoxicating liquor, the evidence on the preliminary examination warranted the examining magistrate in binding a defendant over for trial where it disclosed that this defendant had appeared at the location of a still during the raid in the middle of the night, that another defendant directly in charge of the manufacture and sale of the illicit alcohol made his headquarters at the tavern of this defendant and had there reported to this defendant on the night of the raid that something suspicious was going on at the still, and that this defendant had promised financial aid to another person arrested in connection with the same liquor charge. *Kluck v. State*, 223 W 381, 269 NW 683.

176.052 History: 1969 c. 252; Stats. 1969 s. 176.052.

176.053 History: 1969 c. 252; Stats. 1969 s. 176.053.

176.055 History: 1939 c. 535; Stats. 1939 s. 176.055; 1947 c. 468; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2), (3).

176.06 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.06; 1943 c. 47; 1953 c. 594; 1955 c. 350; 1957 c. 325, 672; 1959 c. 140; 1959 c. 660 s. 57.

See note to 176.43, citing 31 Atty. Gen. 147. See note to 66.054, on closing hours, citing 32 Atty. Gen. 461.

In determining whether the "principal business" of a "Class B" licensee is a restaurant or liquor business, within 66.05 (10) (hm) 2, 176.06 (5) and 176.32, Stats. 1945, consideration is to be given to the amount of capital, labor, time, attention and floor space devoted to respective businesses, gross and net income derived from each, and the appearance, arrangement, advertising and name of the premises. This is defensive matter as to which the burden of producing evidence is on the defendant. 36 Atty. Gen. 155.

176.07 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.07.

176.08 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.08; 1969 c. 186.

176.09 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.09; 1943 c. 497; 1945 c. 444; 1965 c. 252.

See note to 985.03, citing 39 Atty. Gen. 347.

176.11 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.11; 1945 c. 222.

176.12 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.12; 1949 c. 296.

176.121 History: 1947 c. 362 s. 2; 1947 c. 564; Stats. 1947 s. 176.121; 1949 c. 17 s. 23; 1959 c. 19; 1963 c. 6, 141; 1969 c. 276 ss. 498, 585 (7); 1969 c. 366 s. 117 (2) (a).

176.121 (5), Stats. 1947, does not require violations of local ordinances enacted pursuant to 66.054 and ch. 176 to be reported to the beverage tax division. Only violations of

said statutes need be reported. 37 Atty. Gen. 73.

176.14 History: 1935 c. 187; Stats. 1935 s. 176.14.

176.15 History: 1935 c. 187; Stats. 1935 s. 176.15.

176.17 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.17; 1957 c. 233; 1961 c. 288.

This section does not prohibit the furnishing of a sign by a wholesaler of fermented malt beverages to a retailer of intoxicating liquor. 23 Atty. Gen. 191.

Sale of carbon dioxide gas in drums by a manufacturer to a tavern keeper is illegal. 23 Atty. Gen. 503.

176.17, Stats. 1937, and related statutes do not prohibit granting of a wholesale liquor permit to a corporation where one of its stockholders holds a "Class B" retail license. 26 Atty. Gen. 361.

See note to 66.054, on restrictions on brewers, etc., citing 41 Atty. Gen. 35.

The furnishing, giving or lending of money or other thing of value by a manufacturer, rectifier or wholesaler to a trade association comprised of persons engaged in selling products of the industry for consumption on the premises where sold is prohibited by 176.17 (2), Stats. 1953. The same rule applies to the purchase of advertising space in publications of such an association. 44 Atty. Gen. 34 and 91.

176.18 History: Spl. S. 1933 c. 13; 1935 c. 217, 381; Stats. 1935 s. 176.18; 1939 c. 101; 1939 c. 515 s. 10; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2), (3).

Under 176.18 (9), Stats. 1935, a registered pharmacist holding a permit may advertise and display intoxicating liquor upon wall shelving not to exceed 3 feet in length. 24 Atty. Gen. 675.

Unit advertisements which advertise sale of intoxicating liquor, joined in by a number of independent drug stores, some of which do not have "Class A" retail licenses, constitute advertising in violation of 176.18 (9) by those pharmacists not holding "Class A" retail licenses. 26 Atty. Gen. 446.

A city may not by ordinance require a registered pharmacist holding a permit under 176.18 (1) to take out also a "Class A" license for sale of intoxicating liquors. A municipality has discretion to refuse a pharmacist's permit under 176.18 (1), but such discretion may not be abused. A municipality may not require that liquor be sold only on prescription for medicinal, mechanical or scientific purposes. 27 Atty. Gen. 495.

A city may not by ordinance set up regulations respecting sale of intoxicating liquors for medicinal or scientific purposes which are in conflict with 176.18. Requirements or regulations not required by said section are in conflict therewith. 27 Atty. Gen. 650.

176.19 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.19.

176.20 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.20.

The provisions of 176.20 to 176.25, Stats. 1933, apply only to a residence district as de-

fined therein and not to whole communities. 23 Atty. Gen. 152.

176.21 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.21.

176.22 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.22.

Where no registration of electors is had, correct enumeration of all electors in a district made by any person therein may be used in determining what constitutes a majority of electors in a district. 27 Atty. Gen. 492.

176.23 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.23.

176.24 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.24; 1965 c. 252.

176.25 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.25; 1965 c. 252.

176.26 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.26; 1945 c. 124; 1953 c. 235.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Constantineau v. Grager*, 302 F Supp. 861.

The name of an alleged drunkard which has been posted for one year may not be removed from the banned list before expiration of a year. 25 Atty. Gen. 547.

The official or body placing a name upon a blacklist under this section inadvertently or through mistake has power to correct error. (4 Atty. Gen. 347, insofar as it holds otherwise, overruled.) Where conditions exist that permit blacklisting official discretion once exercised may not be changed during a year. (3 Atty. Gen. 507 and 25 Atty. Gen. 547, insofar as they so hold, approved.) 27 Atty. Gen. 616.

176.27 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.27; 1945 c. 124.

176.28 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.28; 1945 c. 124; 1947 c. 362 s. 2; 1967 c. 276; 1969 c. 87.

176.26 and 176.28 do not vest in authorities any right to require that a "posted person" be photographed, such photograph to become part of "posted notice" served on tavern keepers. 24 Atty. Gen. 406.

A person selling or giving away liquor to a prohibited person within the meaning of this section and 176.26 is liable if he has actual notice of the prohibition. It is not necessary that he be served with written notice. 28 Atty. Gen. 514.

Knowledge of the identity of the purchaser is a necessary element of the offense of sale of liquor to a person "posted" under 176.28 (1). 36 Atty. Gen. 537.

176.29 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.29.

176.30 History: Spl. S. 1933 c. 13; 1935 c. 5, 187, 477; Stats. 1935 s. 176.30; 1945 c. 33.

Under 176.30 (3) liquor shall not be sold within one mile of any insane hospital building in which any inmate is housed. 25 Atty. Gen. 355.

176.30 (3) does not apply to county hospitals for the insane. 42 Atty. Gen. 190.

176.31 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.31; 1963 c. 144, 436; 1969 c. 168.

176.32 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.32; 1943 c. 459; 1951 c. 215, 734; 1953 c. 74; 1963 c. 371; 1965 c. 158, 263; 1969 c. 275.

176.32 does not prohibit a minor between 18 and 21 from being in a tavern as a member of a band hired to play there. *State v. Wrobel*, 24 W (2d) 270, 128 NW (2d) 629.

Proof of knowledge on the part of a tavernkeeper that the prospective patron is actually under age is not required by 176.32 (1), which prohibits a tavernkeeper from permitting any person under age to enter or be upon such licensed premises. Allowance by a tavernkeeper of a minor to remain on tavern premises in good-faith reliance on false credentials is no defense, since the statute imposes strict liability, and its purpose is simply to keep minors as patrons or customers out of taverns. *West Allis v. Megna*, 26 W (2d) 545, 133 NW (2d) 252.

The word "guardian" as used in 176.32, Stats. 1945, is not restricted to guardians appointed by a court. However, it is limited to persons standing in loco parentis and does not include casual relationships formed for a limited purpose, such as visiting taverns. 35 Atty. Gen. 113.

176.32 applies to barrooms and other specific rooms where liquor is sold or dispensed and is not inclusive of other parts of the premises. Construction of rooms should be such as to preclude reasonable doubt as to sufficiency. 37 Atty. Gen. 286. See also 38 Atty. Gen. 540.

See note to 66.054, on presence in places of sale prohibited, citing 41 Atty. Gen. 340.

Premises operated under both a "Class A" intoxicating liquor license and a restaurant permit are not exempt from the prohibition against permitting minors to enter or be on such premises. 44 Atty. Gen. 208.

Minors may be present on premises licensed for the sale of intoxicating liquor under the conditions set forth in 176.32 (1) but may not be sold or served with any intoxicating liquor; if accompanied by parent or guardian, or if of the age of 18 or older, they may be sold or served beer while so lawfully on the premises. 47 Atty. Gen. 203.

Under 176.32 (1) an unaccompanied minor may not purchase beer, beverage, food in non-exempt "Class A" retail liquor establishment. Chewing gum is not an "edible" within the meaning of the statute. 47 Atty. Gen. 298.

176.33 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.33.

176.341 History: 1935 c. 187; Stats. 1935 s. 176.341; 1951 c. 88.

176.35 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.35.

In 176.35 the words "knowingly sell" mean selling with knowledge of the identity of the person to whom the liquor is sold; and hence a tavern keeper who knew that a person of a certain name was posted as an habitual drunkard, but who did not know such posted person and did not know that the person to

whom he sold liquor was such posted person, was not liable under the statute. *Crist v. Kiltz*, 232 W 567, 288 NW 175.

Under the common law it is not an actionable wrong either to sell or to give intoxicating liquors to an able-bodied man. In the absence of statutes covering the case, a plaintiff whose automobile was run into by an automobile operated by an intoxicated driver had no cause of action for his injuries against the tavern keeper who sold the liquor to the driver. *Seibel v. Leach*, 233 W 66, 288 NW 774.

176.36 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.36; 1967 c. 276 s. 39; 1969 c. 87, 255; 1969 c. 392 s. 60g.

176.37 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.37.

176.38 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.38, 176.39; 1939 c. 365; 1949 c. 17 s. 23; 1951 c. 247 s. 43; Stats. 1951 s. 176.38; 1965 c. 666 s. 22 (3), (12); 1969 c. 276 s. 590 (2).

Questions of issuing intoxicating liquor and fermented malt beverage licenses cannot be on the same ballot. 24 Atty. Gen. 411.

Electors may, on one petition, request referendum on issuance of intoxicating liquor and fermented malt beverage licenses. 24 Atty. Gen. 411.

A local option election was probably invalid where notice was posted only 6 days in advance of the election and it was commonly believed that the election would be invalid, many people not voting for that reason, the chairman announcing the election to be invalid, and votes not having been recorded by the clerk. 25 Atty. Gen. 361.

A petition for a referendum on the question of granting intoxicating liquor licenses filed prior to April 1937 election but not filed at least 30 days prior thereto may not be made the basis of submission of said question at the spring election in 1938. Vote at referendum election against granting of intoxicating liquor licenses does not terminate intoxicating liquor licenses then in force. 27 Atty. Gen. 123.

When electors of a town vote at a spring election to change from licensing to nonlicensing status or vice versa, the town board has authority under 176.38 (2) and 176.05 to grant liquor licenses which will be effective at once and which will terminate upon July first of that year. 28 Atty. Gen. 275.

See note to 66.054, on general requirements of licenses, citing 30 Atty. Gen. 229.

Failure to notify the beverage tax division within the time prescribed by 176.38 (1) and 66.054 does not render an election void. Where an election resulted in voting beer out and voting intoxicating liquors in, 176.05 (10) (b) prohibits issuing a "Class B" liquor license. 30 Atty. Gen. 351.

Elections under 176.38 may be held on the second Tuesday in April regardless of whether town officials are to be elected under 60.19 in the same year. 35 Atty. Gen. 81.

176.40 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.40.

176.401 History: Spl. S. 1933 c. 13; 1935 c. 187; Stats. 1935 s. 176.401; 1961 c. 33.

176.402 History: 1935 c. 187, 387; Stats. 1935 s. 176.402; 1937 c. 418; 1947 c. 306; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2).

176.403 History: 1935 c. 187; Stats. 1935 s. 176.403; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2).

176.404 History: 1935 c. 187; Stats. 1935 s. 176.404; 1949 c. 17 s. 23; 1967 c. 122; 1969 c. 276 s. 590 (2), (3).

176.405 History: 1935 c. 187; Stats. 1935 s. 176.405; 1955 c. 696 s. 44.

176.406 History: 1937 c. 261; Stats. 1937 s. 176.406; 1949 c. 17 s. 23; 1953 c. 61; 1969 c. 276 s. 590 (2).

176.41 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.41; 1939 c. 94; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2).

The opinion in 29 Atty. Gen. 48 is disapproved to the extent that it holds that a second conviction under 176.41 need not occur in the same license year as the first in order to effect automatic revocation of the license. 35 Atty. Gen. 96.

The provision of 176.41 forfeiting a liquor license upon conviction of a second offense applies only where the first conviction was for an offense for which no specific penalty is provided. Hence a second conviction under 176.30 (1), which section contains a specific penalty provision, does not result in forfeiture of a license. 35 Atty. Gen. 375.

176.42 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.42; 1949 c. 17 s. 23; 1955 c. 221 s. 52; 1969 c. 276 s. 590 (2), (3).

176.43 History: Spl. S. 1933 c. 13; 1935 c. 217; Stats. 1935 s. 176.43; 1949 c. 17 s. 23; 1955 c. 221 s. 53; 1969 c. 276 s. 590 (2).

Editor's Note: Proposed regulations of the state treasurer were considered in 29 Atty. Gen. 178; and regulations promulgated by the state treasurer were considered in 31 Atty. Gen. 140.

Municipalities may make more rigid closing requirements with respect to the sale of intoxicating liquors than those established by 176.06. (Ruling in 27 Atty. Gen. 650 distinguished.) 31 Atty. Gen. 147.

176.44 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.44; 1951 c. 261 s. 10.

176.45 History: Spl. S. 1933 c. 13; Stats. 1935 s. 176.45.

176.46 History: Spl. S. 1933 c. 20; Stats. 1935 s. 176.46.

176.50 History: Spl. S. 1933 c. 11; 1935 c. 187; Stats. 1935 s. 176.50.

176.60 History: Spl. S. 1933 c. 7; 1935 c. 187; Stats. 1935 s. 176.60; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2), (3).

The terms "grain," "vegetable" and "fruits" as used in 176.60 include sugar cane. 32 Atty. Gen. 438.

176.62 History: 1935 c. 40, 452; Stats. 1935 s. 176.62; 1937 c. 337; 1945 c. 97; 1949 c. 17 s. 23; 1951 c. 417; 1959 c. 228 s. 64; 1961 c. 622; 1965 c. 252, 334; 1965 c. 625 s. 41; 1967 c. 66; 1969 c. 276 s. 585 (6), (9).

176.63 History: 1935 c. 187; Stats. 1935 s. 176.63.

176.65 History: 1935 c. 187; Stats. 1935 s. 176.65; 1949 c. 17 s. 23; 1969 c. 276.

176.66 History: 1935 c. 187; Stats. 1935 s. 176.66.

176.67 History: 1935 c. 187; Stats. 1935 s. 176.67.

176.70 History: Spl. S. 1933 c. 5; Spl. S. 1933 c. 14 s. 1; 1935 c. 187, 217; Stats. 1935 s. 176.70; 1937 c. 346; 1949 c. 17 s. 23; 1969 c. 276 s. 590 (2), (3); 1969 c. 392 s. 87 (9).

When 2 or more are associated in the business of selling liquor for future delivery, the firm must obtain a permit under 176.70 (1) and its representatives must also obtain permits. 39 Atty. Gen. 353.

See note to 66.054, on class "B" retailers' licenses, citing 40 Atty. Gen. 114.

176.705 History: 1935 c. 217, 420; Stats. 1935 s. 176.705.

176.71 History: 1935 c. 187; Stats. 1935 s. 176.71; 1949 c. 17 s. 23; 1969 c. 276 s. 585 (7).

176.72 History: 1937 c. 174; Stats. 1937 s. 176.72; 1947 c. 362 s. 2.

176.90 History: 1945 c. 374; Stats. 1945 s. 176.90; 1947 c. 362 s. 2; 1949 c. 17 s. 21, 23; 1951 c. 261 s. 10; 1955 c. 10; 1967 c. 138; 1969 c. 252; 1969 c. 276 ss. 500, 585 (7).

Ch. 374, Laws 1945, commonly known as the "Thomson Law," providing for a special proceeding, on petition of the state, for the revocation of the beer or liquor license of any person who knowingly permits any slot machine, etc., to be set up, etc., on the licensed premises, does not conflict with any provisions of the constitution. State v. Coubal, 248 W 247, 21 NW (2d) 381. See also 34 Atty. Gen. 87.

Under 176.90 (9) the district attorney has no duty to report to the governor the negative circumstance that he has not received reports of the presence of specified gambling devices within his county during the preceding quarter year. In the absence of such report, the governor must presume the district attorney has done his duty, unless proof is received by the governor of the presence of such gambling devices in said county, and of the district attorney's knowledge thereof. In the latter circumstance the governor may remove the district attorney on his own complaint. 36 Atty. Gen. 307.

An electrical coin-operated machine which asks the player 5 questions and gives him a period of time in which to select which of 6 proposed answers to each question is correct is lawful if used solely for amusement; but if prizes are paid for high scores it violates 176.90, 348.07 (1) and 348.09, Stats. 1947. 37 Atty. Gen. 126.

A pinball machine which does not contain any automatic pay-off is a gambling device under 176.90 when its recorded scores are used to determine the winner of a prize given by the proprietor. 39 Atty. Gen. 435.

A baseball tally card is a device designed for a form of gambling similar to that for

which a number jar is used and is within the terms of 176.90. 39 Atty. Gen. 546.

176.91 History: 1969 c. 252; Stats. 1969 s. 176.91.

CHAPTER 177.

Unclaimed Property.

Editor's Note: For foreign decisions construing the "Uniform Disposition of Unclaimed Property Act", see Uniform Laws, Annotated.

177.01 History: 1969 c. 404; Stats. 1969 s. 177.01.

177.02 History: 1969 c. 404; Stats. 1969 s. 177.02.

Editor's Note: The following cases had to do with prior legislation on unclaimed funds in banks: State v. Marshall & Ilsley Bank, 234 W 375, 291 NW 361; Marine Nat. Ex. Bank v. State, 248 W 410, 22 NW (2d) 156; State v. First Wisconsin Nat. Bank, 250 W 107, 26 NW (2d) 161; and State v. First Wisconsin Trust Co. 266 W 610, 64 NW (2d) 210. See also: 25 Atty. Gen. 303, 25 Atty. Gen. 420, 26 Atty. Gen. 64, and 26 Atty. Gen. 390.

See note to sec. 4, art. XI, on general banking law, citing Marine Nat. Ex. Bank v. State, 248 W 410, 22 NW (2d) 156.

See note to sec. 1, art. I, on inherent rights, citing State v. First Wisconsin Trust Co. 266 W 610, 64 NW (2d) 210.

177.03 History: 1969 c. 404; Stats. 1969 s. 177.03.

177.04 History: 1969 c. 404; Stats. 1969 s. 177.04.

177.05 History: 1969 c. 404; Stats. 1969 s. 177.05.

177.06 History: 1969 c. 404; Stats. 1969 s. 177.06.

177.07 History: 1969 c. 404; Stats. 1969 s. 177.07.

177.08 History: 1969 c. 404; Stats. 1969 s. 177.08.

177.09 History: 1969 c. 404; Stats. 1969 s. 177.09.

177.10 History: 1969 c. 404; Stats. 1969 s. 177.10.

177.11 History: 1969 c. 404; Stats. 1969 s. 177.11.

177.12 History: 1969 c. 404; Stats. 1969 s. 177.12.

177.13 History: 1969 c. 404; Stats. 1969 s. 177.13.

177.14 History: 1969 c. 404; Stats. 1969 s. 177.14.

177.15 History: 1969 c. 404; Stats. 1969 s. 177.15.

177.16 History: 1969 c. 404; Stats. 1969 s. 177.16.