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STATE OF ILLINOIS
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SPRINGFIELD

March 13, 1972

No. S-424

LIQUOR:
Local Option

Honorable B. H. Huschen
State's Attorney
Woodford County
Eureka, Illinois 61530

Dear Mr. Huschen:

I have your recent letter wherein you state:

"I would appreciate very much receiving an opinion from you regarding the following facts:

On or about April 19, 1947 a Township in Woodford County voted dry under the local option referendum.

In 1957 a new village was incorporated in this Township. The question is, is the new village wet territory until voted dry under local option by a referendum?"

The controlling statute in this case is Section 8 of Article IX of "An Act relating to alcoholic liquors", (Ill. Rev. Stat., 1971, Ch. 43, par. 173), which provides as follows:

"The status of all the territory within any political subdivision or precinct, relative to the sale at retail of alcoholic liquor, or the sale at retail of alcoholic liquor other than beer containing not more than 4% of alcohol by weight, or the sale at retail of alcoholic liquor containing more than 4% of alcohol by weight except in the original package and not for consumption on the premises, as the case may be, shall remain the same, notwithstanding any change which may be made in the limits of any such political subdivision or precinct until the voters thereof have changed such status as to annexed or disconnected areas under the provisions of Section 8.1 of this Article, or until the voters have changed such status for areas other than annexed or disconnected areas under the provisions of Section 2 or Section 9 of this Article."

This office had occasion to construe the foregoing statutory provision in Opinion No. 260 which was issued on October 5, 1955 and is found at page 208 of the 1955 Illinois Attorney General's Opinions. Although the language of the statute was different at that time, the Opinion is an important precedent in construing the statute as it exists today. At page 210 of this Opinion is found the following:

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It is believed that the intent of the legislature in inserting this clause, 'notwithstanding any change which may be made in the limits of any such political subdivision,' was merely to emphasize that the absolute prohibition was still to be in effect in spite of any change in the territorial limits. In this specific case, which is an extreme one, it is emphasized that the prohibition against the sale at retail of alcoholic liquor shall continue until the legal voters of the political subdivision have voted otherwise according to the provisions of the Act. If no change is made in the territorial limits of any such political subdivision, the absolute prohibition still must be given effect. The fact that the statute mentions an extreme situation, parenthetically, for purposes of emphasis, does not mean that less extreme situations are excluded from the totality of the prohibition.

At page 211 appears the following:

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Even though the annexation by a city of a portion of a township which has previously voted dry does not result in a change in the territorial limits of the township, yet the absolute prohibition in paragraph 173 which prohibits the sale of liquor throughout the entire extent of the township until the legal voters thereof have voted otherwise according to the provisions of the Act still must be given effect. Accordingly, I conclude and it is my opinion that upon the annexation of an unincorporated area formerly within a dry township by a city that is wet, such annexed area remains dry.

Although the facts which you present are not a situation where there is an annexation by a city of a portion of a township which has previously voted dry, it is an analogous situation. It is the creation of a new village out of territory of a township which had previously voted dry. The foregoing statute now clearly provides that the territory within any political subdivision or precinct shall remain the same notwithstanding any changes either to the limits of the township or changes within the township. I am of the opinion that the territory of the new village, being a part of a township which had previously voted dry, remains dry until the voters of the new village change such status under local option by referendum.

Very truly yours,

A T T O R N E Y G E N E R A L