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NORTHWEST TERRITORIES

SESSIONAL PAPER NO. 10
(Second Session, 1966)

LOCAL OPTION ON LIQUOR SALES

DISPOSITION

Tabled	To Committee	Accepted as Read	Accepted as Amended	Deferred (to Session)	Rejected	Noted not Considered
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LOCAL OPTION ON LIQUOR SALES

At the thirty-second Session of the Council of the Northwest Territories, January 24 - February 7, 1966, it was agreed that a paper should be prepared on the question of local option regarding liquor sales in the Territories.

In our study of the above matter we have referred frequently to what is often referred to as the "Bracken Report". This is the report of the Manitoba Liquor Enquiry Commission established to make recommendations consistent with the public interest and the general welfare of the people of Manitoba with respect to the entire field of relevant facts, matters, issues and legislation relating to the manufacture, sale, distribution and consumption of spirituous, vinous and malt liquors within the Province. The report produced by the Commission is believed to be the most comprehensive study ever undertaken in connection with the sale of liquor. The Commission studied the attitude of the people of the Province towards their Liquor Act and the results of the administration of the Act by the Manitoba Liquor Commission; it obtained the views of the other Provinces of Canada as expressed in their liquor laws and administration and, studied the practices of representative states of the United States and the laws and experiences of some other countries. The Commission visited nine of the ten Provinces of Canada and obtained from various provincial officials pertinent information and reports. They visited six representative states of the U.S.A. and the District of Columbia and obtained a vast amount of information regarding the laws, regulations and administrative procedures in many of the other states.

Because of the thoroughness with which the Commission enquired into all aspects of liquor administration it should be useful to Council members to summarize from the report the contents prepared in connection with the question of local option, as it applies in Manitoba.

The Commission was instructed in particular to make findings and recommendations with respect to the adequacy of the Government Liquor Control Act and Regulations and the administration of the Act and Regulations regarding the principle of local option by-laws relating to liquor outlets of all kinds. The findings of the Commission may be summarized as follows:

1. A municipality is under local option when on a vote taken in the municipality a majority of the duly qualified electors voting, vote against the local sale of liquor. A municipality remains under local option until the by-law passed as a result of the vote is repealed by a subsequent vote.
2. In any municipality under local option
 - (a) no liquor store can be established, maintained or operated; except that in cities and towns, liquor stores or warehouses for the distribution of liquor otherwise than by the cash and carry system, may be established and continued; and
 - (b) no beer licence or club licence can be granted or continued in respect of any premises situated therein; and
 - (c) no place can be fixed or approved of as a place from which a brewer may deliver beer (i.e. no brewery outlets through warehouses, etc.).
3. Municipality is defined as a city, town, village or rural municipality. It is by virtue of this definition that the common situation occurs of a rural municipality voting itself under local option while a city, town or village located in the said rural municipality remains unaffected by the said vote.
4. Submission of a local by-law or the repeal thereof must be initiated in the form of a petition signed by at least 20% of the resident electors whose names appear on the last revised voters' list of the municipality. When filed with the clerk of the municipality, the

- petition must bear signatures obtained and signed by all the petitioners within the calendar year in which it is filed. Each sheet of signatures must be verified by affidavit.
5. Upon receiving such a petition, the clerk shall post a notice of its receipt in a conspicuous place in his office. Objections in writing to the sufficiency of the petition may be made by any resident elector within one week of its filing or within such further time as the Attorney General may allow. Any objections so received must be sent by the Clerk to the Attorney General along with a copy of the petition, the last revised list of electors, and any other material relating to the petition. The Attorney General may receive any further objections to the petition and shall then summarily decide the question of the sufficiency upon such evidence as he chooses to receive. The finding of the Attorney General as to the sufficiency of the petition or otherwise shall be final and without appeal. Where the Attorney General finds the petition sufficiently signed or where the petition has been accepted by the Council without objection raised thereto, the validity of the petition and of any local option by-law submitted in consequence thereof, shall not be subject to further question before the Council of a municipality or before or by any court or judge.
 6. Upon receipt of a petition for local option duly signed as provided before August 15th of any year, the Council of the municipality, at its first regular meeting thereafter, shall pass the first and second readings of the by-law before September 15th. The by-law shall then be voted on by the electors on the day fixed by law for the polling at the next annual municipal election for the municipality providing that the voting day is not less than 4 weeks after the second reading of the by-law.
 7. Within 2 weeks following the first and second readings of the by-law, the Council shall publish in a local or other newspaper circulating in the municipality a notice stating the object or purpose of the proposed by-law, that it has been submitted to the Council and has received its first and second readings, that a vote thereon will be taken on the annual municipal election day, that the proposed by-law can be seen in the office of the municipal clerk until the day of voting thereon, and that further consideration of the by-law after the taking of the vote will be made by the Council at the time and place therein named. This notice must be published at least once each week for the three weeks before the vote is taken.
 8. The form of the ballot to be used at the voting as prescribed contains two questions "For Local Sale" and "Against Local Sale". The voting takes place the same hours and at the same places where the polling is held at the annual municipal elections, and the returning officer and the deputy returning officers are the same.
 9. The persons entitled to vote on the by-law shall be
 - (a) any resident elector whose name appears on the then last revised list of electors of the municipality; and
 - (b) any person whose name is not on the said list who is 21 years of age, a British subject by birth or naturalization, and who has resided within the province for one year and within the municipality for the three months last preceding the date of voting, provided that any such person is vouched for by an elector whose name appears on the list and who is a resident in the municipality. The forms of oath to be taken before the deputy returning officer by an applicant who claims the right to vote and by the elector offering to vouch for the applicant are specifically provided for. Once these oaths have been duly administered, the

applicant's name shall be entered on a separate list of electors and the applicant may then vote.

10. Any person offering to vote on the by-law may be challenged by any legal voter as being disqualified in which case the deputy returning officer shall require the person challenged to take an oath in the form provided.
11. A local option by-law requires the assent of a majority of those entitled to vote who actually vote on the by-law. If the by-law is carried by the majority of those voting, it shall be read for a third time and passed by the Council of the municipality at its next regular meeting following the voting. The clerk shall then forward to the Liquor Commission a true copy of the by-law showing the date on which it was finally passed and the by-law shall come into force on the first day of April, next, after that date.
12. Provision is made for recounts when the result of the vote is disputed and there is also provision for the procedure to be followed if an election petition is presented against such a by-law.
13. The provisions for submitting a local option by-law to repeal a local option by-law are the same as those heretofore described. However, no petition to repeal a local option by-law can be received within three years of the taking of the vote on the local option by-law; and conversely, no local option by-laws can be submitted within three years of the taking of a vote on a repealing by-law.
14. In addition to the local option provisions of the Government Liquor Control Act of the province the residents of any federal electoral district in Manitoba may, by petition signed by one-quarter of the resident electors therein, request the Governor in Council to hold an election under the Canada Temperance Act. If the petition is carried by a majority of those voting, the Governor in Council must proclaim Part II of the Temperance Act as being in force in the said electoral district. Part II of that Act closely resembles the provincial provisions in a local option area, e.g. no liquor to be sold for beverage purposes, no licensed premises, etc. A petition to repeal an Order in Council bringing into force Part II of the Temperance Act may not be brought for a period of three years from the bringing into force of said Part II.
15. In 1927, 49 Rural Municipalities out of the total of 114 in Manitoba remained "dry" when the Moderation League Bill (later the Government Liquor Control Act) was voted upon. Since that time 17 of these Municipalities, through local option elections, have voted for the sale of liquor. The sale of liquor is not allowed in the remaining 32 Rural Municipalities. No Municipality in which the sale of liquor has been approved has subsequently voted "dry" in a local option election. In the total of 164 local option elections held from 1928 to 1954 (some Municipalities having voted several times) the total votes cast were as follows:

Total votes in favour of local sale 42,127

Total votes against local sale 49,984

16. Incorporation of 19 villages in Manitoba has taken place since the Government Liquor Control Act came into effect in 1928.
 - (a) Eight of these villages had hotels licensed to sell beer prior to their incorporation. Three of them do not have a licensed hotel. The village of Powerview was incorporated in 1951 and had a hotel licensed to sell beer the same year, a local option vote not being required.
 - (b) Eight other villages all of which are surrounded by "dry" municipalities, held local option elections shortly following

their incorporation. The sale of liquor was approved in all of these local option elections and hotels were licensed to sell beer in seven out of the eight villages.

17. The opinions elicited by the Commission enquiring into the sale of liquor, are listed as follows:
- A. Most submissions presented were strongly in favour of local option. Several made no comment, only a few were opposed.
 - B. The general feeling in favour of local option was very well put by one speaker as follows:

"We are of the opinion that the present privilege of local option should be maintained in keeping with the democratic principles of our province."
 - C. The majority view of the Winnipeg Chamber of Commerce and the Manitoba Chambers of Commerce (representing 65 rural branches), was in favour of local option.
 - D. Several speakers referred to the fact that the principal of local option has been abused in "dry" rural areas where villages are allowed to incorporate in order to obtain a beer parlour. It was claimed that several small urban centres had deliberately incorporated themselves out of a "dry" municipality in order to obtain licensed hotels through local option.
 - E. It was pointed out several times that when beer parlours or liquor stores were thus allowed in disregard of the wishes of the majority in a municipal area, it caused grave dissatisfaction among many rural people. It was considered that those in a "dry" area were in effect disfranchised when a village within their area became incorporated and voted itself "wet". The feeling was general that local option has been in a large degree made useless in recent years by improvements in roads, wider use of motor cars, and the establishment of "wet" villages and towns in otherwise "dry" municipalities.
 - F. In several of the briefs, it was requested that when a local option vote is to be taken, a separate question should be required for each type of outlet being considered.
 - G. The Flin Flon Trades and Labour Council announced itself as being opposed to local option. They felt that the Government should not "seek refuge from responsibility" by resorting to local option.
 - H. The Manitoba Temperance Alliance advised that all important changes in Manitoba's liquor laws had, in the past, been preceded by a Province-wide referendum or plebiscite, and that the people expected that such action would continue to be followed before any further changes were made.
 - I. It was frequently represented to the Commission that a uniform restrictive law over all sections of Manitoba - rural and urban, industrial and farming, and areas differing in racial and religious customs, could not and would not be uniformly observed or enforced. The inference was that certain details of any law would not be acceptable in some communities and that consequently it was desirable to arrive at such changes in the law as would be more widely acceptable to the majority in each community. In the opinion of many, local option was considered a most effective way to provide the needed flexibility in the law.

- J. The Hotel Association suggested that their industry would have more stability if:
- (i) The number of signatures on petitions requesting a local option vote were raised from 20% of the electors in the local option area, as at present, to 30% before a vote could be called; and
 - (ii) The period of time between local option votes be increased from four years to six years.
- K. On the whole it may be stated that Manitoba opinion as represented by those appearing before the Commission is in favour of the principle of local option. The practice, it was felt, had become traditional in Canada. It has been traditional in Manitoba from the time the province was formed.
- L. A Province-wide referendum, before any proposed action was taken, was suggested a number of times. A few opposed this view. At most hearings of the Commission the question of a referendum was not even raised.
- M. Eight provinces out of ten provide for local option. Prince Edward Island and New Brunswick have no such provision.
- N. The details of the local option laws vary in different provinces, with respect to three things; the percentage of voters required on a petition asking for the vote, the majority required for its passage and the number of years before a second vote can be taken.
- O. The percentage of voters required on a petition varies from 20% in Manitoba and Nova Scotia up to 35% in British Columbia. In Quebec in certain cases as few as 30 electors or the Municipal Council may initiate a local option vote.
- P. The majority required for approval varies from a simple majority (over 50%) as in the case of Manitoba, to 55% as in British Columbia and 60% in Ontario. In four other provinces - Newfoundland, Nova Scotia, Quebec and Saskatchewan - a simple majority carries.
- Q. The time that must elapse before a second local option vote can be taken after a previous one averages about three years.
- R. The Commission found that local option is a practice that has long been approved in the United States. In 1919, at the time of the passage of the Prohibition amendment, 95% of the land area (and 68% of the population) was already "dry" through exercise of local option and State prohibition.
- S. According to the Distilled Spirits Institute of Washington, D.C., there is now in effect some type of local option law regarding spirits in all but eight of the states. In a number of them there is a permissive law under which communities may provide for the sale of liquor if the majority vote for it under some form of local option. As to local option on beer sales, 32 states provide for it but 16 do not. The law applies to beer having more than 3.2% alcohol - beers of 3.2% or lower alcohol content being generally permitted without a vote.
- T. The result of the operation of local option in the United States is that 688 counties out of 2,911 in the 46 "wet" states are "dry" with respect to the sale of distilled spirits. (All counties are, of course, legally "dry" in the two prohibition states.)
- U. The Commission was advised that the importance attached to local option in the State of Maine, which was the first state to achieve prohibition (1851) was chiefly responsible for introducing the local option system to Canada about 100 years ago.

- V. Three sound observations on the exercise of local option apparently pertinent to any further application of the principle in Manitoba are quoted as follows:
1. "The area of local option. Existing political divisions are manifestly unsatisfactory. In some cases they are too large, including urban and rural elements; while in other cases they are too small, dividing homogeneous metropolitan areas. New local option areas, based on factual surveys, are manifestly a necessity.
 2. "The subject matter of local option. Although voters should not be asked to vote on problems that are too complicated or involved, the choice between 'wet or dry' is too narrow. The automobile has upset the possibility of certain types of local restriction, and this condition should be frankly realized.
 3. "The stability of local option. One of the most unfortunate features of local option under pre-prohibition conditions was the instability of community mood and decision. Frequent changing back and forth has the tendency to drive responsible persons out of the business. It forces the remaining proprietors into politics, and by increasing the financial hazards, provides an incentive to dealers to push sales inordinately. Partly to introduce greater stability, we have already suggested the creation of appropriate areas and the provision of the variety of options. We believe it desirable also to require that local option votes be at special elections, so that the question of liquor may not be involved in general politics. A matter thus determined should not be subject to reconsideration for three or four years."
- W. The "subject matter" of local option votes is regarded as very important where various types of licence are permissible, for example, whether distilled spirits, wine or beer are desired; whether on-premises or off-premises consumption is preferred and whether liquor is desired with or without meals.
- X. The Commission expresses the view that the idea of local option is a normal democratic procedure and is a peculiarly American view. The United Kingdom has had very little to do with it, and it was rejected as a policy by the Royal Commission on Licensing. A like stand was taken by the Royal Commission of both New Zealand and Australia.

RECOMMENDATIONS OF THE BRACKEN COMMISSION

The Bracken Commission incorporated in its report the following recommendations, which may be of interest to the Northwest Territories Council:

1. That local option as a principle be maintained under any new legislation and that the same general details of procedure presently prescribed be continued.
2. That for purposes of local option votes, a local option area be defined as any city, town, village or rural municipality.
3. That the law provide only permissive power for the establishment of any new type of on-premise outlet, and that no such outlet be permitted in any local option area unless and until a majority of the electors therein have approved of its establishment by local option vote.
4. That a petition to initiate a local option vote on one or more of the new types of on-premise outlets require, as in the present Act, the signatures of not less than 20 per cent of the resident electors of the local option area; with the exception that, during the first

year in which the new licences are permitted, the Council of a city, town, village or rural municipality may, where it appears expedient initiate a vote on a local option by-law by a majority vote of the members thereof.

5. That during the first year in which the new types of on-premise licences are permitted, local option votes may be held at any time; but that thereafter, the voting on local option by-laws and by-laws to repeal local option by-laws be held at the same time as the voting at annual municipal elections.
6. That, if a local option by-law on any one or more of the new types of licences has been submitted to the electors in a local option area, no subsequent petition for the submission of a local option by-law or a by-law to repeal a local option by-law respecting the same type or types of licences shall be received at any time prior to the expiration of 3 years thereafter.
7. That no local option by-law be required for the establishment of Government Liquor stores but that the Commissioner operate stores only in local option areas which have voted affirmatively for the establishment of one or more of the permitted types of on-premise licences.
8. That no on-premise licences be issued for premises situated in National, Provincial, Municipal or private parks or recreational grounds without the prior approval of the authorities having control over such areas.
9. That there be a separate question submitted on each of the proposed types of on-premise outlets and that a local option by-law may contain one or more of such questions. It should be noted that no beverage room licences may be granted as a result of a local option vote thereon unless a restaurant beer and wine licence is or has been granted to the premises. Similarly no cocktail room licences may be granted as a result of local option vote unless a dining room liquor licence has been approved.

PREVIOUS RECOMMENDATIONS TO COUNCIL

At the Thirtieth Session of Council held at Yellowknife on June 14 - 25 of 1965 a paper was prepared in connection with local option - liquor sales in which it was stated that local option would serve no useful purpose in the Northwest Territories for reasons stated in substantially the following terms:

1. The Liquor Ordinance prohibits anyone under the age of 21 and interdicted persons from purchasing and consuming liquor. For those persons not in the aforementioned category it is simply a matter of personal option as to whether or not liquor is purchased and consumed. In the provinces local option is gradually receding because residents and visitors everywhere have apparently accepted liquor availability.
2. If the Council were to vote in favour of local option on the basis of a simple majority of the voters it would be possible for 51% of the voters to impose its wishes on the remaining 49% in a matter many people regard as a right. A suggestion has been made in Council that voting on local option should be on the basis of 60% versus 40%. This, however, does not eliminate the possibility of anomaly since by virtue of voting arrangements on that basis it would be possible for 59% of the voters to have their wishes refused through the action of a minority of 41% of the voters. It is suggested that this is not the true spirit of a democratic system.
3. Local option could be expected to contribute to a disregard for law and order by offering increased opportunities for financial gain to the bootlegging fraternity.

4. There is the likelihood that with local option in a community liquor would still be available but at higher cost because sales could only be negotiated by bootleggers.

In view of the above the Commissioner again recommends that legislation for local option not be enacted.

To the foregoing instructions might be added the observation that nearly all hotels in the N.W.T. were granted liquor licences on condition they build and operate a good hotel of substantial size. This is a method of obtaining hotel facilities for small towns widely used in Provinces. It is generally assumed that small town hotels cannot be made to pay without liquor sales; unless their room rents are set at too high a level. The Commissioner and the Council would be regarded as breaking faith with hotel operators if they made it possible for a local vote to close a financially essential part of the hotel operation.