

## Chapter 471

### Alcoholic Liquors Generally

#### Chapter 471

**CASE CITATIONS:** *Bordenelli v. United States*, (1956) 233 F2d 120, 124; *State v. Lermeney*, (1958) 213 Or 574, 326 P2d 768.

**ATTY. GEN. OPINIONS:** Federal excise tax upon state revenues from liquor sales, 1948-50, p 165; restrictions upon political activities of employes, 1948-50, p 313; variations in requirements for and types of liquor licenses, 1952-54, p 67; restrictions upon political activities of licensees, 1954-56, p 17; validity of conflicting city ordinance, 1950-52, p 258, 1954-56, p 41; legislative power to delegate to cities and counties authority to establish closing hours, 1954-56, p 102; requirement that action on license application be based on particular facts presented, 1956-58, p 205; commission authority to issue regulations prohibiting gambling devices on licensed premises, 1956-58, p 281; licensee as political candidate, 1956-58, p 283; determining city population for apportionment of liquor control funds, 1958-60, p 382; forwarding of fines collected under this chapter, 1960-62, p 59; licensee offering prizes to customer, 1966-68, p 586.

#### 471.005

##### NOTES OF DECISIONS

A club was not engaged in a "business" subject to tax imposed by city ordinance on persons engaged in the business of operating clubs in which liquor is served under state license. *City of Coos Bay v. Eagles Lodge*, (1946) 179 Or 83, 170 P2d 389.

#### 471.020

**ATTY. GEN. OPINIONS:** Maintaining of "master lockers" by club licensees for sale by bottle to members, 1948-50, p 100.

#### 471.025

##### NOTES OF DECISIONS

The definition of a sale as set forth in this section has to be followed unless the context of the statute indicates a different meaning. *State v. Laughlin*, (1934) 148 Or 485, 36 P2d 350.

Words "promise or obtain" in subsection (1) (g) mean "promised or obtained." *State v. Lermeney*, (1958) 213 Or 574, 326 P2d 768.

Where liquor consumed by minor was ordered and paid for by adult, there was no "sale" to the minor. *State v. Laughlin*, (1934) 148 Or 485, 36 P2d 350.

Purchaser of liquor for another person with money furnished by such person was not guilty of selling liquor without a license. *State v. Lermeney*, (1958) 213 Or 574, 326 P2d 768.

**ATTY. GEN. OPINIONS:** Sale and purchase of warehouse receipts for bonded whiskey, 1934-36, p 165; validity of

ordinance prohibiting sale of intoxicating liquor to an Indian, 1950-52, p 258.

#### 471.030

##### NOTES OF DECISIONS

The Act is valid as against objection that it embraces more than one subject and contains matters not expressed in its title. *City of Klamath Falls v. Ore. Liquor Control Comm.*, (1934) 146 Or 83, 29 P2d 564.

The Act is inapplicable to Crater Lake National Park. *Crater Lake Nat. Park Co. v. Ore. Liquor Control Comm.*, (1939) 26 F Supp 363.

The commission is authorized to maintain an action to recover privilege taxes for importing beer in view of this section, ORS 471.040 and 471.730 relating to powers and duties. *Oregon Liquor Control Comm. v. Coe*, (1940) 163 Or 646, 99 P2d 29.

The Liquor Control Act and 1945 c. 271, repealed, are regulatory measures involving the exercise of the police power with the principal purpose of regulating and controlling traffic in alcoholic liquors; the fees provided are intended primarily to defray the costs of administration and are only incidental to the main purpose. *City of Coos Bay v. Eagles Lodge*, (1946) 179 Or 83, 170 P2d 389.

A city ordinance which, based on the taxing power, taxed the business of operating clubs, night clubs and service establishments where liquor was served under a club or service license, though invalid in the absence of authorization by the city charter, did not conflict with the Liquor Control Act, or with 1945 c. 271, repealed, which were regulatory measures involving exercise of the police power and imposing fees primarily to defray the costs of administration. *Id.*

The primary purpose of the Liquor Control Act is to regulate and control the sale and use of intoxicating liquor. *Nanny v. Oregon Liquor Control Comm.*, (1946) 179 Or 274, 171 P2d 360.

**FURTHER CITATIONS:** *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489; *Van Ripper v. Ore. Liquor Control Comm.*, (1961) 228 Or 581, 365 P2d 109.

**ATTY. GEN. OPINIONS:** Authority to furnish school instruction on effects of alcohol and narcotics, 1938-40, p 193; preventing gifts or gratuities to beer parlors and financing of beer parlors by breweries, 1940-42, p 365; taxability of profits derived by the state from the sale of liquor under the federal excise tax, 1948-50, p 165; consumption of beer in unlicensed "shuffleboard parlor," 1948-50, p 171; grand jury investigation of commission activities, 1950-52, p 150; validity of ordinance prohibiting sale of intoxicating liquor to an Indian, 1950-52, p 258; requirement that action on license application be based on particular facts presented, 1956-58, p 205; authority for private party to serve liquor on unlicensed premises, 1966-68, p 486; application of prohibition against political contributions and contributions to candidate for district judge, (1970) Vol 35, p 13; authority

to require refundable deposit on beverage container, (1971) Vol 35, p 296.

## 471.040

## NOTES OF DECISIONS

The commission was authorized to sue to recover privilege taxes for importing beer in view of this section, ORS 471.030 and 471.730. Oregon Liquor Control Comm. v. Coe, (1940) 163 Or 646, 99 P2d 29.

Provision that the commission may sue and be sued did not intend to make the commission responsible for acts of the state or property held or used by the state, even though acting through the commission. Pacific Fruit & Prod. Co. v. Ore. Liquor Control Comm., (1941) 41 F Supp 175.

This section does not give the commission power to issue temporary licenses to all whose applications for renewal licenses are pending on December 31. Gouge v. David, (1948) 185 Or 437, 202 P2d 489.

The commission has authority to aid the statute to accomplish the purpose of the Ore. Constitution. Van Ripper v. Ore. Liquor Control Comm., (1961) 228 Or 581, 365 P2d 109.

FURTHER CITATIONS: Crater Lake Nat. Park Co. v. Ore. Liquor Control Comm., (1938) 23 F Supp 316; Crater Lake Nat. Park Co. v. Ore. Liquor Control Comm., (1939) 26 F Supp 363.

ATTY. GEN. OPINIONS: Powers of commission while challenge to validity of the Act is pending, 1932-34, p 519; authority to put on an educational program and expend money therefor without further legislation, 1942-44, p 138; authority to limit the purchases of liquor due to limited supply, 1942-44, p 245; denying license in "dry zone," 1956-58, p 205; construing "sue and be sued" in relation to torts, 1966-68, p 117; legality of licensee selling packaged beer and wine offering prizes to customers, 1966-68, p 586.

LAW REVIEW CITATIONS: 1 WLJ 148, 152.

## 471.045

## NOTES OF DECISIONS

A city ordinance which, based on the taxing power, taxed the business of operating clubs, night clubs and service establishments where liquor was served under a club or service license, though invalid in the absence of authorization by the city charter, did not conflict with the Liquor Control Act, or with 1945 c. 271, repealed, which were regulatory measures involving exercise of the police power and imposing fees primarily to defray costs of administration. City of Coos Bay v. Eagles Lodge, (1946) 179 Or 83, 170 P2d 389.

ATTY. GEN. OPINIONS: Ordinance prohibiting sale of liquor to Indians, 1950-52, p 258; validity of ordinance which is in conflict with a regulation of the commission, 1954-56, p 41; authority of legislature to authorize local option elections which could establish hours for the sale of liquor different from hours designated by the commission, 1954-56, p 102; power of commission to prescribe special closing hours for certain licensees, 1954-56, p 104.

## 471.105

CASE CITATIONS: Gouge v. David, (1948) 185 Or 437, 202 P2d 489.

ATTY. GEN. OPINIONS: Authority to prorate fee for purchaser's permit, 1934-36, p 8.

## 471.115

ATTY. GEN. OPINIONS: Authority to ration sales of liquor, 1942-44, p 245.

## 471.205

## NOTES OF DECISIONS

Former similar statutes prohibiting the sale of liquors without first having obtained a license therefor were in the nature of fiscal and police regulations, and their violation was indictable irrespective of guilty knowledge. State v. Chastain, (1890) 19 Or 176, 179, 23 P 963.

Under a former similar statute, it was no defense to an indictment for selling liquor without a license that the defendant sold as the agent of another person. Id.

FURTHER CITATIONS: Gouge v. David, (1948) 185 Or 437, 202 P2d 489.

## 471.210

## NOTES OF DECISIONS

The words "provide for the licensing" do not give the commission power to issue temporary licenses to all whose applications for renewal of licenses are pending on December 31. Gouge v. David, (1948) 185 Or 437, 202 P2d 489.

FURTHER CITATIONS: City of Coos Bay v. Eagles Lodge, (1946) 179 Or 83, 170 P2d 389; State v. Lermeney, (1958) 213 Or 574, 326 P2d 768.

ATTY. GEN. OPINIONS: Requirement that action on license application be based on particular facts presented, 1956-58, p 205; effect of city or county recommendation, (1970) Vol 35, p 25.

## 471.215

ATTY. GEN. OPINIONS: Authority to regulate liquor prices, 1940-42, p 365; consumption of beer in unlicensed "shuffleboard parlor," 1948-50, p 171; licensees subject to closing hour regulations, 1954-56, p 104; denying license in "dry zone," 1956-58, p 205.

## 471.220

ATTY. GEN. OPINIONS: Regulation permitting a brewery to store and dispose of beer without paying additional fee, 1932-34, p 635; requirement that action on license application be based on particular facts presented, 1956-58, p 205.

## 471.225

ATTY. GEN. OPINIONS: Requirement that action on license application be based on particular facts presented, 1956-58, p 205.

## 471.230

ATTY. GEN. OPINIONS: Requirement that action on license application be based on particular facts presented, 1956-58, p 205.

## 471.235

ATTY. GEN. OPINIONS: Requirement that action on license application be based on particular facts presented, 1956-58, p 205; commission limitation on minimum size of container, (1969) Vol 34, p 842.

## 471.240

## NOTES OF DECISIONS

Tavern owners who delivered the ultimatum that they would not purchase beer from wholesalers if wholesalers did not cease the practice of "off the dock" selling to public consumers, including sales to public consumers legal in Oregon, were guilty of unreasonable restraint of interstate and foreign trade and commerce in beer. *Oregon Restaurant & Beverage Assn. v. United States*, (1970) 429 F2d 516.

ATTY. GEN. OPINIONS: Requirement that action on license application be based on particular facts presented, 1956-58, p 205.

## 471.250

ATTY. GEN. OPINIONS: Commission regulation of forms of entertainment on premises of licensees, 1950-52, p 281; local option election prohibiting sales as not affecting storing and serving, 1952-54, p 67; construing last available census figures, 1952-54, p 248; bingo, with prizes, in licensed premises, 1964-66, p 328; authority of city zoning ordinance to supersede liquor laws, (1970) Vol 35, p 359.

## 471.260

CASE CITATIONS: *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489.

ATTY. GEN. OPINIONS: Legality of licensee offering prizes to customers, 1966-68, p 586; authority to require refundable deposit on beverage container, (1970) Vol 35, p 296.

## 471.265

CASE CITATIONS: *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489.

ATTY. GEN. OPINIONS: Applicability of the section to television, 1948-50, p 170; permissible forms of entertainment, 1950-52, p 281; gambling device on licensee's premises, 1956-58, p 281; authority to serve mixed wine drinks, 1966-68, p 424.

## 471.290

## NOTES OF DECISIONS

The commission does not possess the power to issue a blanket temporary license to all whose applications for renewal of licenses are pending at midnight December 31. *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489.

A receipt for payment of fee accompanying an application for a renewal of a license does not constitute a license or permit to continue activities until the commission takes formal action upon the application. *Id.*

FURTHER CITATIONS: *City of Coos Bay v. Eagles Lodge*, (1946) 179 Or 83, 170 P2d 389.

ATTY. GEN. OPINIONS: Storage and disposal plants as breweries, 1932-34, p 635; requirement that action on license application be based on particular facts presented, 1956-58, p 205.

## 471.295

## NOTES OF DECISIONS

The commission has been vested with discretionary power to grant or refuse licenses, the exercise of which will not be reviewed by the courts unless a clear abuse is shown. *Olds v. Kirkpatrick*, (1948) 183 Or 105, 191 P2d 641.

In the absence of a showing of an abuse of legal duty, a general finding that a license is not demanded by public interest or convenience is sufficient to inform an applicant of the reason for the refusal of a license. *Id.*

After an application for a license is refused, a denial pro forma is proper when no change in conditions is shown. *Id.*

FURTHER CITATIONS: *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489.

ATTY. GEN. OPINIONS: Commission's power to limit number of licensees in one locality, 1932-34, p 635; power of commission to refuse to issue license on certain grounds, regardless of recommendations of county court and city council, 1934-36, p 218; denying license in "dry zone," 1956-58, p 205; effect of city or county recommendation, (1970) Vol 35, p 25.

## 471.301

## NOTES OF DECISIONS

The commission does not possess the power to issue a blanket temporary license to all whose applications for renewal licenses are pending at midnight December 31. *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489.

A receipt for payment of fee accompanying an application for a renewal of a license does not constitute a license or permit to continue activities until the commission takes formal action upon the application. *Id.*

ATTY. GEN. OPINIONS: Surviving member of a partnership continuing operation under partnership license, 1942-44, p 440; effect of city or county recommendation, (1970) Vol 35, p 25.

## 471.315

## NOTES OF DECISIONS

Suspension of a license because an employe was convicted of a misdemeanor for the sale of spirituous liquor on the premises was not an abuse of discretion. *Perry v. Ore. Liquor Control Comm.*, (1947) 180 Or 495, 177 P2d 406.

There was no abuse of discretion by the commission in revoking a license where licensees did not disclose police record of larcenies in application. *Hart v. Ore. Liquor Control Comm.*, (1947) 181 Or 406, 182 P2d 364.

The commission did not abuse its discretion in revoking a license for the sale of liquor to persons under 21, where the testimony was conflicting. *Casciato v. Ore. Liquor Control Comm.*, (1947) 181 Or 707, 185 P2d 246.

ATTY. GEN. OPINIONS: Gambling device on licensee's premises, 1956-58, p 281.

LAW REVIEW CITATIONS: 1 WLJ 252.

## 471.340

ATTY. GEN. OPINIONS: Authority to serve mixed wine drinks, 1966-68, p 424.

## 471.405

## NOTES OF DECISIONS

## 1. Under former similar statute

Sale of two packages of liquor to same person at different times constituted separate offenses. *State v. Newlin*, (1919) 92 Or 597, 182 P 135.

A complaint was not demurrable for failing to allege knowledge of possession on the part of accused. *State v. Bunke*, (1925) 113 Or 523, 233 P 538.

The mere taking of a drink of liquor, after which the bottle was returned to the owner, was not "possession." *State v. Williams*, (1926) 117 Or 238, 243 P 563.

Before a complete case of unlawful possession of intoxicating liquor could be made, it was necessary not only to prove actual or constructive possession, but also that accused had knowledge thereof. *State v. Muetzel*, (1927) 121 Or 561, 254 P 1010.

A former conviction for sale of liquor did not render available the plea of former jeopardy in a prosecution for unlawfully possessing the same liquor. *State v. Nodine*, (1927) 121 Or 567, 256 P 387.

Former jeopardy was not involved where one convicted in a municipal court for violation of an ordinance was also charged in the same court with violating state laws. *Claypool v. McCauley*, (1929) 131 Or 371, 283 P 751.

## 2. In general

Gratuitous procurement of liquor for another person does not violate this section. *State v. Lermeny*, (1958) 213 Or 574, 326 P2d 768.

Indictment charging unlawful sale of liquor was sufficient. *State v. Cook*, (1936) 154 Or 62, 58 P2d 249.

Information, following the language of the statute, charging an unlawful sale of liquor was sufficient. *State v. Pearlman*, (1936) 154 Or 52, 58 P2d 1253.

Where whiskey was stolen in California, brought into Oregon, and then confiscated by the liquor commission, the owner had a cause of action in replevin against the commission when the commission refused to return the property to the owner after he had established his ownership. *Nanny v. Ore. Liquor Control Comm.*, (1946) 179 Or 274, 171 P2d 360.

FURTHER CITATIONS: *Hart v. Ore. Liquor Control Comm.*, (1947) 181 Or 406, 182 P2d 364; *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489; *State v. Waterhouse*, (1957) 209 Or 424, 309 P2d 327.

ATTY. GEN. OPINIONS: Maintaining of "master lockers" by club licensees for sale by bottle to members, 1948-50, p 100; application to a licensed tavern, 1950-52, p 278.

471.410

## NOTES OF DECISIONS

### 1. In general

The sale of liquor to a minor is a crime irrespective of seller's motive or knowledge as to buyer's minority. *State v. Raper*, (1944) 174 Or 252, 149 P2d 165.

If the act of giving intoxicating liquor to a person under 21 is accompanied by circumstances that tend to cause or causes the minor to become a delinquent child the crime under subsection (2) is made out. *State v. Gordineer*, (1961) 229 Or 105, 366 P2d 161.

The act of giving intoxicating liquor to a person under 21 is, in itself, regardless of consequences, a crime under the first part of this section. *Id.*

This section is intended to protect minors from the evils of alcohol and was not (when applied with ORS 471.620) intended to protect the public from injuries caused by intoxicated minors. *Weiner v. Gamma Phi Chap. of Alpha Tau Omega Fraternity*, (1971) 258 Or 632, 485 P2d 18.

### 2. Under former similar statute

The seller's honest belief, after inquiry, that purchaser was an adult did not exonerate him from liability. *State v. Guiley*, (1902) 41 Or 318, 70 P 385.

A person who bought beer with a minor's money and gave it to the minor violated law forbidding the sale or gift of intoxicating liquor to minors. *State v. Gear*, (1914) 72 Or 501, 143 P 890.

Under law prohibiting the sale of liquor to minors, the saloon keeper was guilty although the sale was made during his absence by his bartender. *State v. Brown*, (1914) 73 Or 325, 144 P 444.

ATTY. GEN. OPINIONS: Prohibition against sale to Indian, 1950-52, p 258; right to a preliminary hearing on a charge of furnishing liquor to a minor, (1971) Vol 35, p 764.

LAW REVIEW CITATIONS: 5 WLJ 114.

471.420

ATTY. GEN. OPINIONS: Construing prohibition against any services for political candidate on licensed premises, 1950-52, p 278; licensees' right to oppose or support measures on the ballot, to be candidates for public office, and to engage in political discussions, 1954-56, p 17; licensee serving on committee of candidate for political office, 1956-58, p 283; legality of licensee advertising in political party magazine, 1964-66, p 360; licensee serving political committee on premises, 1966-68, p 606; candidate for district judge as a political candidate, (1970) Vol 35, p 13.

471.430

## NOTES OF DECISIONS

Prior to the 1963 amendment, offering alcoholic drink for immediate consumption did not place the person accepting the drink in illegal possession. *State v. Gordineer*, (1961) 229 Or 105, 366 P2d 161.

Possession of alcohol must be coupled with full control with the right to enjoy its consumption to the exclusion of others. *Id.*

LAW REVIEW CITATIONS: 5 WLJ 114.

471.440

## NOTES OF DECISIONS

### 1. Under former similar statute

Manufacture meant to produce, irrespective of quantity or intended use. *State v. Marastoni*, (1917) 85 Or 37, 165 P 1177.

A person not in actual possession of mash could be convicted of possession where his accomplice was in actual possession pursuant to a common design. *State v. Brown*, (1925) 113 Or 149, 231 P 926.

Law prohibiting possession of "mash," "wort," and "wash" fit for manufacture of liquor was not unconstitutional as too extreme an exercise of police power. *Pack v. State*, (1925) 116 Or 416, 241 P 390.

Statute forbidding operation of distillery was not invalid. *State v. Eaton*, (1926) 119 Or 613, 250 P 233.

FURTHER CITATIONS: *State v. Jennings*, (1929) 131 Or 455, 282 P 560; *State v. Broom*, (1930) 132 Or 363, 285 P 817; *State v. Duffy*, (1931) 135 Or 290, 295 P 953.

471.452

## NOTES OF DECISIONS

Tavern owners who delivered the ultimatum that they would not purchase beer from wholesalers if wholesalers did not cease the practice of "off the dock" selling to public consumers, including sales to public consumers legal in Oregon, were guilty of unreasonable restraint of interstate and foreign trade and commerce in beer. *Oregon Restaurant & Beverage Assn. v. United States*, (1970) 429 F2d 516.

## 471.475

ATTY. GEN. OPINIONS: Authority for private party to serve liquor on unlicensed premises, 1966-68, p 486.

## 471.505 to 471.560

ATTY. GEN. OPINIONS: Effect of "yes" vote on other sales in election on one class of alcoholic liquor in city already dry, 1960-62, p 166.

## 471.505

## NOTES OF DECISIONS

## 1. Under former similar statute

The observance of all statutory requirements in conducting local option elections was essential to their validity. Marsden v. Harlocker, (1906) 48 Or 90, 85 P 328, 120 Am St Rep 786.

The validity of a local option election being directly assailed, the statutory provisions were less liberally construed than if attacked indirectly. State v. Billups, (1912) 63 Or 277, 278, 127 P 686, 48 LRA(NS) 308.

FURTHER CITATIONS: State v. Langley, (1958) 214 Or 445, 315 P2d 560, 323 P2d 301; Boyle v. City of Bend, (1963) 234 Or 91, 380 P2d 625.

ATTY. GEN. OPINIONS: Effect of affirmative vote on each of three propositions submitted under local option provisions, 1934-36, p 129; effect of local option law prohibiting only one phase of licensed activities, 1952-54, p 67; dry zones established by commission as contrary to local option law, 1956-58, p 205; effect of election upon classes not specifically considered, 1960-62, p 166.

## 471.510

CASE CITATIONS: State v. Edmunds, (1909) 55 Or 236, 104 P 430; State v. Runyon, (1912) 62 Or 246, 124 P 259.

ATTY. GEN. OPINIONS: "Dry zones" created by commission, 1956-58, p 205.

## 471.530

ATTY. GEN. OPINIONS: County clerk's authority to refuse to file petition containing the words "intoxicating liquor" instead of "alcoholic liquor," 1940-42, p 88; effect of "yes" vote on other sales in election on one class of alcoholic liquor in city "already dry," 1960-62, p 166.

## 471.556

ATTY. GEN. OPINIONS: Printing questions of local option on general election ballots, 1946-48, p 38; effect of "yes" vote on other sales in election on one class of alcoholic liquor in city "already dry," 1960-62, p 166.

## 471.605

CASE CITATIONS: Watts v. Gerking, (1924) 111 Or 641, 222 P 318, 228 P 135, 34 ALR 1489; Gouge v. David, (1948) 185 Or 437, 202 P2d 489; State v. Langley, (1958) 214 Or 445, 315 P2d 560, 323 P2d 301.

ATTY. GEN. OPINIONS: Availability of in rem proceeding against places where nuisances exist, 1964-66, p 132.

## 471.610

CASE CITATIONS: State v. Elkins, (1959) 216 Or 509, 339 P2d 715; State v. Gould, (1966) 244 Or 354, 418 P2d 262.

## 471.620

## NOTES OF DECISIONS

In an action against one who has created a public nuisance, plaintiff must show his injuries are within the general class of harms which the nuisance statute aims to prevent. Weiner v. Gamma Phi Chap. of Alpha Tau Omega Fraternity, (1971) 258 Or 632, 485 P2d 18.

Indictment in the exact language of the statute was demurrable since it did not inform the accused in what respects their acts were illegal. State v. Elkins, (1959) 216 Or 509, 339 P2d 715.

FURTHER CITATIONS: State v. Hoffman, (1917) 85 Or 276, 166 P 765, 1 ALR 1683; State v. 1920 Studebaker Touring Car, (1927) 120 Or 254, 251 P 701, 50 ALR 81.

ATTY. GEN. OPINIONS: Selling soft drinks knowing they will be mixed with alcoholic liquor and consumed on the premises, not licensed, as maintaining a common nuisance, 1946-48, p 477; authority for private party to serve liquor on unlicensed premises, 1966-68, p 486.

## 471.630

LAW REVIEW CITATIONS: 28 OLR 408.

## 471.660

CASE CITATIONS: State v. De Ford, (1927) 120 Or 444, 250 P 220; State v. Christensen, (1935) 151 Or 529, 51 P2d 835; State v. Hoover, (1959) 219 Or 288, 347 P2d 69, 89 ALR 2d 695.

ATTY. GEN. OPINIONS: Hearing preceding forfeiture of automobile affording an opportunity to be heard by any claimants, 1946-48, p 57; duties as to this section of peace officer appointed specifically for another purpose, 1950-52, p 120.

LAW REVIEW CITATIONS: 6 OLR 177.

## 471.665

CASE CITATIONS: State v. 1920 Studebaker Touring Car, (1927) 120 Or 254, 251 P 701, 50 ALR 81.

ATTY. GEN. OPINIONS: Unlawfully imported alcoholic liquor, abandoned by owner, delivered by the sheriff seizing it to the commission although no conviction has been obtained, 1942-44, p 454.

LAW REVIEW CITATIONS: 6 OLR 386.

## 471.670

## NOTES OF DECISIONS

The allowance of a claim by the county court against the enforcement fund rested upon the exercise of discretion, and a peremptory writ of mandamus could not require the court to allow it. Linklater v. Nyberg, (1963) 234 Or 117, 380 P2d 631.

ATTY. GEN. OPINIONS: Duty of county court as to examination and verification of claims as to form against fund provided for in statute, and power to approve or reject claims, 1934-36, p 773; authority of district attorney to ap-

prove claims against the liquor enforcement fund of the county, 1946-48, p 145; conflict with subsequent statute directing payment to state and county treasurers, 1960-62, p 59; application of Local Budget Law to Liquor Enforcement Fund, 1966-68, p 28; authority to allow claims subject to audit, (1970) Vol 34, p 977.

**471.680****NOTES OF DECISIONS**

An information for unlawfully selling liquor is sufficient if it follows the language of the statute. *State v. Pearlman*, (1936) 154 Or 52, 58 P2d 1253.

**471.705****NOTES OF DECISIONS**

The liquor commission is not a corporation; it is a governmental or administrative body and, as such, an alter ego of the state. *Pacific Fruit and Prod. Co. v. Ore. Liquor Control Comm.*, (1941) 41 F Supp 175.

**FURTHER CITATIONS:** *Van Ripper v. Ore. Liquor Control Comm.*, (1961) 228 Or 581, 365 P2d 109.

**ATTY. GEN. OPINIONS:** Propriety of investigation of the liquor commission by a grand jury, 1950-52, p 150; marking of automobiles used by commission, 1952-54, p 192; distribution of funds after 1967 amendment, 1966-68, p 312.

**471.710**

**ATTY. GEN. OPINIONS:** Authority of grand jury to investigate commission, 1950-52, p 150.

**471.720**

**CASE CITATIONS:** *Oregon Liquor Comm. v. Coe*, (1940) 163 Or 646, 99 P2d 29.

**ATTY. GEN. OPINIONS:** Attorney and administrator for commission as employes, 1940-42, p 81; payment of attorney without the Attorney General's approval, 1948-50, p 134; commission reports as public record, 1948-50, p 186; right of employes of commission to vote on initiative, referendum and recall petition, 1948-50, p 313; right of agent of liquor commission to seek political office, 1952-54, p 228; effect on this section of the creation of a Department of Justice, 1954-56, p 39; fiscal year of commission, 1966-68, p 312.

**471.725**

**CASE CITATIONS:** *State Hwy. Comm. v. Rawson*, (1957) 210 Or 593, 616, 312 P2d 849.

**ATTY. GEN. OPINIONS:** Paying premium on liability policies covering privately owned equipment operated by employes, 1938-40, p 747; executing insurance policies covering public liability for accidents occurring in state liquor stores, 1940-42, p 20; purchasing plate glass insurance against damage other than fire, 1940-42, p 257; placing additional insurance on buildings where the State Restoration Fund is depleted, 1942-44, p 65; Secretary of State auditing and drawing warrants in payment of purchases of liquor by the commission for future delivery, 1942-44, p 222; purchasing real property outside the state, 1942-44, pp 270, 344; Department of Agriculture's discretion in conduct of the state fair controlled by this section, 1942-44, p 354.

**471.730****NOTES OF DECISIONS**

The commission was authorized to sue to recover privilege taxes for importing beer in view of this section, ORS 471.030 and 471.040. *Oregon Liquor Control Comm. v. Coe*, (1940) 163 Or 646, 99 P2d 29.

The commission has general power to enforce the provisions of the Liquor Control Act. *Pacific Fruit & Prod. Co. v. Ore. Liquor Control Comm.*, (1941) 41 F Supp 175.

A regulation making the licensee responsible for the "act or omission of any servant, agent, employe or representative" is reasonable. *Perry v. Ore. Liquor Control Comm.*, (1947) 180 Or 495, 177 P2d 406.

The commission cannot issue temporary licenses valid for the period in which the commission has a renewal application under consideration. *Gouge v. David*, (1948) 185 Or 437, 202 P2d 489.

The word "permit" refers not to a vendor's permit, but to a purchaser's permit. *Id.*

The commission has authority to make regulations to aid the statute to accomplish the purpose of the Ore. Constitution. *Van Ripper v. Ore. Liquor Control Comm.*, (1961) 228 Or 581, 365 P2d 109.

The cooking and serving of food is an important feature of any business authorized to be licensed. *Id.*

**FURTHER CITATIONS:** *City of Coos Bay v. Eagles Lodge*, (1946) 179 Or 83, 170 P2d 389; *State ex rel. Nilsen v. Whited*, (1964) 239 Or 149, 396 P2d 758; *Oregon Newspaper Publishers Assn. v. Peterson*, (1966) 244 Or 116, 415 P2d 21.

**ATTY. GEN. OPINIONS:** Power to refuse license notwithstanding county court and city council recommendations, 1934-36, p 218; fixing and regulating prices of liquor, 1940-42, p 365; authority to pay outstanding claims in purchase of distillery, 1948-50, p 134; implied authority to license malt beverage sales at sporting events, 1950-52, p 281; validity of ordinance which is in conflict with a regulation of the commission, 1954-56, p 41; authority to establish closing hours, 1954-56, p 104; legality of licensee selling packaged beer and wine offering prizes to customers, 1966-68, p 586; authority to require refundable deposit on beverage container, (1970) Vol 35, p 296.

**471.740****NOTES OF DECISIONS**

Where whiskey was stolen in California, brought into Oregon, and then confiscated by the commission, the owner had a cause of action in replevin against the commission when the commission refused to return the property to the owner after he had established his ownership thereof. *Nanny v. Ore. Liquor Control Comm.*, (1946) 179 Or 274, 171 P2d 360.

**FURTHER CITATIONS:** *City of Coos Bay v. Eagles Lodge*, (1946) 179 Or 83, 170 P2d 389.

**ATTY. GEN. OPINIONS:** Authority of commission to purchase equipment and supplies, 1932-34, p 526; sale of liquor by clubs maintaining "master lockers," 1948-50, p 100; agent for sale of liquor as independent contractor, 1952-54, p 228.

**471.745**

**ATTY. GEN. OPINIONS:** Regulating prices of liquor, 1940-42, p 365; authority to require refundable deposit on beverage container, (1970) Vol 35, p 296.

## 471.750

ATTY. GEN. OPINIONS: Permitting persons to purchase liquor outside the state and having it shipped to them in care of the commission's warehouses, 1942-44, p 245; construing authority to employ agents, 1960-62, p 425.

## 471.755

CASE CITATIONS: Gouge v. David, (1948) 185 Or 437, 202 P2d 489.

ATTY. GEN. OPINIONS: Authority of county clerks to collect fees for recording regulations, 1932-34, p 593.

## 471.760

CASE CITATIONS: Gouge v. David, (1948) 185 Or 437, 202 P2d 489; State ex rel. Thornton v. Williams, (1959) 215 Or 639, 336 P2d 68.

## 471.770

LAW REVIEW CITATIONS: 38 OLR 304.

## 471.780

ATTY. GEN. OPINIONS: Distribution of funds after 1967 amendment, 1966-68, p 312.

## 471.790

ATTY. GEN. OPINIONS: Immunity of commissioners from suit generally, 1966-68, p 117.

## 471.805

CASE CITATIONS: Pacific Fruit & Prod. Co. v. Ore. Liquor Control Comm., (1941) 41 F Supp 175.

ATTY. GEN. OPINIONS: Operation of 1967 amendment, 1966-68, p 312.

## 471.810

ATTY. GEN. OPINIONS: Distribution to city following election authorizing its disincorporation, 1948-50, p 458; determining population of city for purposes of establishing share in distribution, 1956-58, p 136; constitutionality of provision to distribute funds to cities, 1958-60, p 338; population determined by supplemental certificate, 1958-60, p 382; use of revised certificate of census board in distribution of funds, 1960-62, p 153; use of revenues for relief to indigents, 1962-64, p 301; crediting funds to State Census Account after July 1, 1963, 1964-66, p 246; operation of 1967 amendment, 1966-68, p 312; purpose for which county may spend funds, 1966-68, p 571; apportionment of funds collected before but distributed after 1969 amendment, (1969) Vol 34, p 719.

## 471.990

CASE CITATIONS: State v. Waterhouse, (1957) 209 Or 424, 309 P2d 327.

ATTY. GEN. OPINIONS: Right to a preliminary hearing on a charge of furnishing liquor to a minor, (1970) Vol 35, p 764.