SELF-REGULATION IN THE BREWING INDUSTRY

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The American brewing industry as it exists today is a billion-dollar business less than eight years of age, recreated overnight by popular demand after thirteen years of Prohibition, governed by 50 different sets of laws and regulations and confronted by myriad problems dealing with its present and future.[1] In any consideration of modern American brewing's part in the social and economic world today, it is essential that the effects of the years of Prohibition be assigned an important role. Beer was relegalized as a restoration of individual liberty and a source of revenue, to be sure. But when the Congress relegalized light beer on April 7, 1933, and the necessary 36 states acted to repeal the Eighteenth Amendment eight months later, the thought uppermost in the minds of most Americans was that the abuses and disrespect for law which accompanied Prohibition would vanish once beer and liquor were sold as valid articles of trade.[2]

The responsibility for drawing the laws regulating beer and brewing fell to the state legislatures, and the thoughts that have been mentioned dominated the philosphy of the state laws as they were enacted. By and large, an excellent job was done—considering that no adequate changeover from Prohibition to legalization had been worked out, that haste was apparently of the essence, and that the public had had no transition period in which to divest itself of peculiar habits acquired during the life of the Eighteenth Amendment.

Legality, in other words, was deemed sufficient protection for the industry and the public as well. The fact that light beer was permitted to be sold for eight months before the Twenty-first Amendment became effective may have seemed at the time to provide a sufficient time of transition; there was no provision, however, to deal with the psychological reactions of a nation to which, for the first time in thirteen years, certain personal liberties which had never been abandoned had been officially restored.

The states, the District of Columbia, and the territory of Alaska—considering only the continental United States—established alcoholic beverage control boards, liquor control boards, revenue department supervisors, liquor licensing departments, beverage divisions of tax departments, and other state agencies. These agencies or boards

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[1] See PERSONS, BEER AND BREWING IN AMERICA (Revised ed. 1940).

[2] See President's Repeal Proclamation, 48 STAT. 1720 (1933).

were empowered to issue brewing, wholesaling and retailing licenses—in some cases, even purchaser-permits—and to revoke these licenses if their privileges were abused.[3]

In virtually every state, stringent restrictions barred the brewer from having financial interest in or furnishing equipment to retail places. The same restrictions, generally, were placed on the wholesaler. Laws prohibited credit among brewer, wholesaler, retailer and consumer. The theory behind these restrictions was that the brewer, by means of the so-called controlled outlet or tied-house, had been responsible for the old-time saloon. Although disagreeing with this theory, the brewing industry as a whole approved of the philosophy of the legislators—that the saloon and its social implications should not again be permitted to become a part of American life.

The reborn brewing industry accepted willingly the restrictions placed around it, albeit with human misgivings about some of the bans which denied to it certain trade practices which were permitted and considered logical for other industries such as dairying and meat packing.

Beer and ale were brewed legally and distributed as the various laws directed. Distributors or wholesalers obtained their licenses and looked for retailers. Restaurateurs, grocers and a new crop of tavern licensees purchased beer and dispensed it to the public. The business grew, not to the point at which it stood in 1914, to be sure, but to the point, at least, at which its total taxes alone amounted to more than a million dollars a day.[4] With beer being legally manufactured in 40 states and drawing on 100 industries in all the states for equipment and supplies, brewing generated an economic upswing which resulted in the creation or maintenance of a million jobs, and in local and national business benefits which have been estimated at eleven billion dollars in seven years.[5]

After three years of conducting its business affairs as other American industries conduct theirs, the brewing industry began to hear complaints that all was not as it was meant to be. Word filtered through that the public, here and there, had become so dissatisfied with actual conditions in retailing places that some areas had again voted for local prohibition where this was provided under the law. Realizing that the public, after all, was the final court of appeal for the continuation of its privileges, the brewing industry at once set about determining just why the public was displeased or was likely to be dissatisfied with the operation of the industry it had worked so strenuously to relegalize. Here the industry sought the answer not only among the public, but in the various state laws and regulations.

In almost half the states, Sunday sales were specifically prohibited by either law or regulation. A large majority of the state laws specifically prohibited the serving of minors or intoxicated persons, and the employment of minors. Other states took the same attitude through regulations. Laws and regulations by the control boards in many cases also forbade employment of women, solicitation, treating, disorder, gambling, obscurity, employment of felons, the serving of persons receiving charity,

[3] See CULVER AND THOMAS, STATE LIQUOR CONTROL ADMINISTRATION, A STATUTORY ANALYSIS (1940).
[4] PERSONS, *op. cit. supra* note 1, at 24.
[5] Industry Statistics, United Brewers Industrial Foundation, Oct. 1, 1940.

the construction of booths, the serving of women at bars, music and dancing.[6] It appeared that these were the evils, not beer itself, which the state legislatures and the public wished to guard against, and that violations of these provisions were causing public complaint—not against them but against beer. It is also important to note that these violations were taking place not in breweries or in wholesaling establishments, but in licensed retail establishments. The brewer had been completely removed from responsibility or authority by the restrictions illegalizing any brewer-control of retail outlets.

Thus it became apparent at once that the burdens which prior to Prohibition had been the province of the brewer had become under the new legislation the burdens of the individual retailer. He, alone, was given the responsibility of operating a wholesome place. Thus the individual retailer's task was made the most delicate in the industry; without industry aid, he had been made solely responsible for the future of a billion-dollar business. A few states, to be sure, have laws or regulations providing penalties upon the consumer should he be the cause of disturbances in taverns. However, it is the rule that a licensed retailer is the sole responsible party for the conduct of and in his place of business.

Two tremendously important problems confronted the brewers of America. First, the public had carried its Prohibition habits over into the new era, and, second, there had sprung up among the licensed retailers some "black sheep" proprietors whose weakness or unscrupulous law violations brought unwarranted condemnation upon the majority of reputable licensees. Admitting that these problems created clouds over the future of legal beer, the brewing industry undertook the giant task of dealing in some way with both of them. Brewing trade associations instituted studies to determine what could be done, and of these studies was born the United Brewers Industrial Foundation and its plan of industry self-regulation.[7]

Self-regulation, which has come to be the basic and permanent policy of the brewing industry as its contribution to law and order, was first attempted as an experiment in Nebraska, in June, 1938. Conditions in Nebraska were near average—probably a little better on the whole, than in some parts of the country. But because Nebraska had come to be the proving-ground of so many successful experiments, the industry thought the choice sound and logical. Nebraska's laws regulating the manufacture, sale and use of beer were and are typical of the laws in other states, differing only slightly wherever such differences exist. A Liquor Control Commission has authority to issue licenses and to revoke them. Nebraska is the home of five breweries, and provides territory for distribution of some beers manufactured outside the state. Under these circumstances, the experiment was begun.

With the cooperation of out-of-state brewers doing business in Nebraska and sponsored by the Nebraska industry itself, on June 5, 1938, a meeting was held in Omaha to which all the interested brewers and all the distributors in the state were

[6] See CULVER AND THOMAS, *op. cit. supra* note 3.

[7] See UNITED BREWERS INDUSTRIAL FOUNDATION, AN ANCIENT BEVERAGE AND A MODERN INDUSTRY (1939).

invited. Ninety-five percent participation resulted. Thus was the Nebraska Brewers and Beer Distributors Committee established, to become the prototype for thirteen similar state committees. At the meeting, an executive committee of brewers and distributors was selected by the entire membership. To administer the work of the Committee, the membership selected as State Director Mr. Charles E. Sandall, a former United States Attorney who had been in office during Prohibition. A former member of Nebraska's Supreme Court Commission, Mr. Sandall was known throughout the state as a man of character and energy. He accepted his new task only after he was convinced that the industry was sincere in what it planned to do.[8]

Briefly, the Nebraska Brewers and Beer Distributors Committee's plan was this: to withhold supplies of beer from retail licensees who failed to observe their responsibilities under the law, and to seek the revocation of the licenses of those retailers who persisted in flagrant violations, either committed or countenanced. In refusing to furnish beer to retailers who failed in their responsibilities, the Committee took the attitude that although removal of beer probably would not improve the moral tone of these places, the industry would forego profits rather than allow its products to be dispensed in unsavory surroundings. The mechanics of the program were simple. The state was mapped into 17 districts, and in each district all distributors became members of a district committee. The special function of these committees was to assist Mr. Sandall in observing conditions in their territory, bettering them by persuasion where possible, and refraining from interfering in drastic action if the State Director considered this necessary.

Here, again, it must be emphasized that the brewers and distributors had no legal responsibility for the conduct of beer outlets, and no authority save that of industry perservation and the public welfare. They had the right and responsibility, however, of every good citizen: to aid and support the properly constituted authorities. In this case, the industry's cooperation was offered to and accepted by the Nebraska Liquor Control Commission, and by local authorities as well. Retail licensees were advised of the Nebraska Committee's formation. Those who refused to cooperate with the public and the Liquor Control Commission by cleaning up the violations of law which were noted on their premises soon learned that the Nebraska Committee's program was no hollow promise.

When two agents of the Liquor Control Commission were assaulted in a tavern, Mr. Sandall at once informed committee members. They withheld supplies of beer from the proprietor. His license was revoked by the Commission.[9] This action by the Commission undoubtedly would have been taken with or without any concurrent activity by the brewing industry; nevertheless, it was a test which demonstrated the industry's sincerity and the workability of the program. The vigilant Nebraska press cited the incident as foreshadowing "the dawn of a new day in the beer branch of the liquor trade."[10]

[8] See public statement of Charles E. Sandall (June 5, 1938).
[9] Nebraska Liquor Control Commission, Proceedings against Vernon Staskiewicz (June 1938).
[10] See Omaha World-Herald, June 17, 1938, "A New Day" (editorial).

Thus encouraged, Mr. Sandall directed investigation of retail outlets called to his attention, either by members of the industry or the public. Corrections were tried, with gratifying results. The great majority of retailers, it was found, were anxious to cooperate with the Liquor Control Commission and the Nebraska Committee, once they fully realized that in the beer retailing business the law and public sentiment are always right and the customer all too frequently wrong.

Another test was presented when a retailer who had failed to heed the Committee's warnings sued for damages after he found that distributors were unwilling to sell him beer. He charged restraint of trade, naming State Director Sandall and those distributors who refused to supply him with beer. When the case finally reached trial, the jury was informed of what the Nebraska brewing industry was trying to accomplish. The verdict was returned in favor of the Committee,[11] thus establishing the first court precedent in the industry's campaign for high retailing standards.

The public in Nebraska soon became aware of the activities of the Nebraska Brewers and Beer Distributors Committee, and, like the Liquor Control Commission, welcomed the industry's shoulder at the law-enforcement wheel. The public likewise began to respond to the industry's reminder that the public had a responsibility—that of patronizing only those licensed beer establishments which observed the law. Retailers, quick to sense that they were the ultimate beneficiaries of the Committee's work, undertook to get their houses in order.

At the end of the first full year of the Committee's work in Nebraska, Mr. Sandall received from the Chairman of the Liquor Control Commission a letter stating: "We would be negligent, indeed, if we failed to express to you our appreciation of the work your organization has done. . . . We welcome wholeheartedly such help. . . ."

After scanning the Nebraska operation for six months, the industry at large acknowledged that self-regulation had the merit of dealing at once with two of the problems besetting legalized beer—the "black sheep" dispenser and the consumer who aided, abetted and frequently instigated law violations. As a consequence, self-regulation was adopted by the United Brewers Industrial Foundation, an educational, non-profit-making organization having as its members not only brewers but also allied manufacturing industries.

Beginning in 1939, the idea of self-regulation as applied in Nebraska was explained to the industry in other states. Simultaneously the states were studied to determine where the program could aid the authorities and the industry in dealing with their problems. As the program was gradually extended to other states, attorneys-general strengthened it when, in response to requests by state officials, they ruled that it is legally permissible in the public welfare for members of the industry to cease selling beer to known law violators.[12]

[11] Anderson v. Anstine *et al.* (Dist. Ct. Buffalo Co., Neb., Apr. 18, 1939).

[12] From correspondence and records of attorneys-general of the following states: Ala. (Mar. 1939), Okla. (Sept. 1939), Miss. (Oct. 1939), W. Va. (Nov. 1939), Tenn. (Feb. 1940), Ga. (Feb. 1940), Ark. (Mar. 1940), Ky. (May 1940).

The states in which the industry now has adopted self-regulation are Nebraska, Kansas, Missouri, Oklahoma, Arizona, Arkansas, Maine, West Virginia, Kentucky, Tennessee, North Carolina, Georgia, Alabama and Mississippi. As an appreciation of the meaning of self-regulation grows, and the industry's facilities permit, this number will be increased.

A few of the activities of the 14 state self-regulatory committees in pursuance of the greater respect for law and order enjoined by President Roosevelt in proclaiming repeal of the Eighteenth Amendment will serve to give point to this explanation of the brewing industry's cooperation with the authorities.

In Mississippi, where beer is the only legal alcoholic beverage, a college student was killed in a "honky-tonk" in Lowndes County, bordering Alabama in the northern section of the state. Petitions were immediately circulated for the outlawing of beer, the inference being that legal sale of beer had been at the root of the slaying. Evidence collected by the Brewers and Mississippi Beer Distributors Committee had previously brought about revocation of the licenses of two such places in the county, but the distributors agreed that they had better take more far-reaching action. They immediately stopped selling beer to nine places, including the one in which the shooting had occurred. Local officials followed with raids and padlock orders. Six of the "spots" with evidence of law violation were put out of business. Conditions became better than normal, and newspapers emphasized that beer was not to blame, pointing out the effects of the Committee's work. No action was taken on the local prohibition petitions.

In Huntsville, Alabama, a prominent and influential citizen interceded for a retailer whose license the Committee sought to have the Alcoholic Beverage Control Board revoke. When the State Director of the Committee produced his case in private, the citizen withdrew his support of the retailer, explaining he had not known that "conditions were that bad." The license was revoked.

In Tennessee, where there is no central authority for the regulation of beer licensees, fewer than half of the state's 95 counties had set up the legally required machinery for county regulation when the industry's Committee was organized. The State Director, an able attorney and former floor leader in the State Senate, aided in the drafting of a model license application which has since been adopted in whole or in part by 52 counties.

Beer of 3.2% alcoholic content is the only legalized alcoholic beverage in Kansas. In that state, it is illegal for licensed beer retailers to possess the $25 Federal tax stamp issued to those handling beer, wine and liquor; the $20 Federal beer tax receipt alone is legal. Foreseeing the obvious intent of several hundred retailers who had obtained the $25 receipt, the Kansas Committee's State Director promptly informed responsible Kansas enforcement authorities of the names of the holders of the illegal stamps and urged that action be taken against them. Likewise, authorities in North Carolina have been asked by the Brewers and North Carolina Beer Distributors Committee to scrutinize carefully all applications for beer licenses to guard against evasion of

the provision in the law barring an individual guilty of any liquor law violation in the previous two years from obtaining a retail beer license.

A brief summary of the results of self-regulation is in order. Bearing in mind that the state committees have been formed one after another, rather than simultaneously, the work has been slow in accumulating figures which the sensationally-minded would consider impressive. Nevertheless, state committees have conducted 18,002 investigations which have resulted not only in 2,158 warnings to retailers to correct certain conditions, but also in 23 probations, 38 license suspensions, 71 injunctions, 125 prosecutions of bootleggers, and 459 license revocations by enforcement authorities. In addition, it has been established that in 921 rechecked cases, warnings have brought corrective action by cooperative retailers.[13]

The Foundation does not establish a state committee as a temporary measure. Once a state committee is brought into being, it remains an integral part of the brewing industry in that state, always available for cooperation with the public and the authorities. From this explanation of the why and how of self-regulation in the brewing industry members of the general public may obtain a view of how one extensive industry is conducting its effort to abide by the many statutes which have been set up to regulate it.

Another important phase of self-regulation also will be remarked: the utter absence of political or legislative activity by state committees, and refusal to become involved in trade practices or disputes. Such activity is forbidden by Foundation policy, in keeping with the spirit of the Repeal Proclamation in which the national policy was stated[14] to be that "the social and political evils that have existed . . . shall not be revived nor permitted again to exist." In conclusion, it should be observed that through self-regulation, the brewing industry hopes to do its part to guard against the return of the bootlegger menace and to eliminate "such others as would profit at the expense of good government, law and order." This, brewers feel, is a debt to the nation; a debt that can be paid by vigilance and action.

[13] Self-Regulation Statistics, United Brewers Industrial Foundation, October 5, 1940.
[14] 48 STAT. 1721 (1933).