

2017

Local Option Elections *“a petitioner’s guide”*

Understanding Ohio Local Options

This guide will provide local option petitioners with the tools necessary to qualify and conduct a successful local option election based upon the resources available.

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field resource mgmt., inc.



**UNDERSTANDING
THE LOCAL OPTION PROCESS
*WHERE TO BEGIN..***



Understanding Ohio's Local Option Process

Contrary to a wide held belief, the Ohio Division of Liquor Control, your local board of elections, or the office of the Ohio Secretary of State does not have all the answers you may need when it comes to sorting out local option problems. There is no such thing as a clearinghouse of information on local options. While these agencies are knowledgeable about the process, the individual role of each in the process is limited. It's precisely this limited role that creates inherent problems for entrepreneurs seeking information about these elections.

Our goal is to provide you with a clearinghouse of information that can point you in a direction that enables you to qualify and conduct a successful local option election based upon the resources available. But to accomplish this we need to establish a common understanding of local options.

In the narrow sense, a local option is the smallest election held in Ohio. These issues allow residents of a certain precinct to determine the rules governing the sale of beer, wine, and spirituous liquors either by the package or by the drink within their precinct, or at a business or businesses within their precinct. In the broad sense, a local option is a key component of Ohio commerce and retail commercial development generated from the issuance of more than 31,000 liquor permits in Ohio.

The **liquor status** of an area or a specific address is ALWAYS governed by the results of the most recent local option held in that area. Current precinct boundaries and precinct names are irrelevant.

Local options represent a union in the Ohio Revised Code between Title 35 (Election Law) and Title 43 (Liquor Law). Individually, both titles of the Code are difficult to understand. When used in conjunction with each other, the subtle complexities created can raise many questions which can be difficult, if not impossible, to accurately answer. Even the simplest of questions like "is my location WET or DRY?" can require hours of research which may yield only partial information or worse yet - more questions. With that in mind, please review this information and contact us at any time with questions or concerns. We are a phone call or email away.

The results of a local option election determine the **current liquor status** of a precinct or business. In other words, the liquor status (*type of liquor sales allowed or prohibited*) on a piece of ground or at a specific business address within arbitrary precinct boundaries is CONSTANT based upon the most recent local option election held that affects that address or piece of ground. Even though precinct boundaries continually change over time, the liquor status of the ground within those boundaries DOES NOT change UNTIL another local option election is held which overturns the results of a previous election.

The starting point for any local option petitioner is to determine the current precinct location of your business and then determine the "local option history of that location within that precinct.

The Repeal of Prohibition:

While not technically a local option, the question on the Repeal of Prohibition was expressed through a vote to repeal Section 9 of Article XV of the Ohio Constitution. Essentially, those Ohio subdivisions voting in favor of repeal were considered *WET* for liquor sales and those voting against repeal were considered *DRY*. However, those areas voting AGAINST the repeal REMAINED DRY for the sale of Spirituous (high-proof) Liquors ONLY. While being DRY for spirits, these areas were also WET for the sale of beer, wine, and mixed beverages (low-proof liquors).

There have been many unnecessary local options held in Ohio due to a misunderstanding of the effect of the vote on the repeal of prohibition as it relates to the sale of beer, wine, and mixed beverages.

Choosing the proper local option questions is critical to your business success. Many times, individuals pursuing local options on their own choose the wrong questions and are alarmingly surprised to find out, upon an affirmative vote, that they cannot do what they had planned to simply because they circulated and filed the wrong petition. The most common local option questions are explained below:

I. PARTICULAR BUSINESS LOCATION LOCAL OPTIONS

Permit holders, applicants for a permit, or their designated agent may pursue a local option that is specific to their business location. That is, the effect of this type of local option is relevant only to the petitioner's business location. It has no effect on any other precinct permit holders or potential permit holders. To qualify a prospective business MUST apply for the necessary permits from the Ohio Division of Liquor Control and sign an affidavit stating the proposed use for the location after the election.

Particular location questions allow the permit holder or permit applicant to gain the desired privilege with a single question put before voters. These questions can include all beverage types or just a specific beverage needed in a partially wet precinct. In addition, the privilege can be requested on Sundays beginning as early as 10:00 a.m. or the traditional 11:00 a.m.

There are some strategic implications on the effect of the particular location local option questions which need to be considered. First, a precinct wide local option which affects all permit holders in the entire precinct can be overruled with a particular location local option question. That is, if a vote on Sunday sales for restaurants in a precinct is rejected, a restaurant can gain Sunday Sales privileges by receiving voter approval for their restaurant ONLY at an election immediately following rejection of the precinct-wide Sunday sales vote. Likewise, voter rejection of a particular location local option can also be overturned by voter approval of a precinct wide vote.

Therefore, it's very important to assess the likelihood of a precinct wide local option by other interested parties before pursuing a particular location question. Under Ohio law, a well-intentioned permit holder or applicant could inadvertently wipe out the effects of a successful particular location vote at one restaurant in a precinct by seeking Sunday Sales approval for ALL restaurants in the same precinct.

Q. Can't I just do a *Particular Location* question and a precinct-wide question at the same time? Doesn't that increase my chances?

A NO! Under Ohio law if both a precinct wide local option and a Particular Location local option are on the ballot at the same time – in the same precinct, the results of the Particular Location question will govern THAT LOCATION regardless of the results of the precinct wide question. This is the ONLY instance in the law where the results of a particular location ARE NOT overridden by the results of a precinct-wide local option question.

Q. Can residents of a precinct use a *Particular Location* question to remove liquor sales at a particular business within a precinct?

A NO! Under Ohio law Particular Location Local Options can ONLY be used by valid Permit Holders, valid Applicants for a permit or State Liquor Agency, or a valid Agent so designated by either a permit holder, applicant for a permit or liquor agency store applicant or owner. The law does not allow precinct residents to “go after” your business without going after all businesses in your precinct.

Q. Do I need an address to use a *Particular Location* question? I own some land and would like to make it WET for a convenience store.

A NO! Under Ohio law you are not required to have a specific address to use the Particular Location Local Option questions. HOWEVER, you must have an application for a permit on file with the Ohio Division of Liquor Control. In order to file an application, you must prove that you have tenancy rights to the property.

II. BEER SALES

The beer local option questions determine the **wet/dry status** of a precinct as it relates ONLY to the sale of beer for on-premise (by the drink) or off-premise (carry out) consumption. If your business intends to operate under a C-1 or D-1 permit with an original issue date prior to April 15 1982, passage of the appropriate beer question will allow beer sales seven days a week. If your business intends to operate on a permit issued anytime after that date, (*new issue permit*) you would only be allowed to sell beer Monday through Saturday unless any of the Sunday Sales questions that are available (except Sunday Beer Sales ONLY) are or were previously approved by voters.

The beer questions are as follows:

Question A: “Shall the sale of beer as defined in Section 4305.08 of the Revised Code under permits which authorize sale for off-premise consumption only be permitted in this precinct or district?”

Question B: “Shall the sale of beer as defined in Section 4305.08 of the Revised Code under permits which authorize sale for on premise consumption only, and under permits which authorize sale for both on-premises and off-premises consumption, be permitted in this precinct or district?”

Question A is necessary for a carry out, grocery store, mini-mart, or convenience store to sell beer in sealed containers. Passage of Question A (*Local Option Petition Form 5-A*) would not allow the sale of beer by the individual drink. To allow this, voters must first approve **Question B**. This would permit restaurants and bars to sell beer for consumption on & off the premises were sold.

However, if your business is a carry out located in an area which is dry for beer sales passage of Beer Question B would also permit your business to sell carry out beer while simultaneously allowing restaurants and bars to sell beer by the individual drink. Conversely, a bar or restaurant could not get the necessary privileges upon passage of the A question on the Beer Petition Form 5-A.

This “quirk” in the law allows a carry out or grocery store two chances to acquire the necessary privileges to sell beer while affording the restaurant or bar only one. The key to determining the proper Beer Question is in the question itself. The phrase in each question “under permits which authorize sale for...” followed by on-premise or off-premise determines the effect of the election.

III. WEEKLY SALES

A four (4) question local liquor option determines the **wet/dry status** of a precinct as it relates to the sale of intoxicants during the week. These questions relate specifically to weekly beverage alcohol sales Monday through Saturday ONLY and cover the carry-out and on-premise sale of wine and mixed beverages & spirituous liquors. An explanation of each question in common language is given below.

PETITION FORM 5-C (4-Question Weekly/Precinct-wide)

- Question A:** The CARRYOUT ONLY sale of wine and mixed beverages.
- Question B:** The ON-PREMISE & CARRY-OUT sale of wine and mixed beverages.
- Question C:** The ON-PREMISE sale of spirituous liquors by the glass.
- Question D:** The permission of residents to locate a state liquor store in a precinct.

None of the above questions cover the sale of beer. This is because beer is treated separately under Ohio's local option law and is completely covered, except for Sunday beer sales, by the two questions available on Form 5-A as previously noted. Beer sales can also be sought by using Particular Business Location Form 5-R.

IV. SUNDAY SALES

A three (3) question local option determines the **wet/dry** status of precincts as it relates to the sale of beer and intoxicating liquor and applies only to the restricted hours of one p.m. to midnight on Sunday. Many precincts in Ohio are wet for weekly beverage alcohol sales but dry for beverage alcohol sales on Sunday. Likewise, due to precinct realignment and annexations, many precincts are partially wet for weekly/Sunday sales and partially dry for these same privileges. While this sounds very confusing to the layman, Ohio's local option law is specific and a complete understanding of the questions and effect of the elections is necessary to fully ascertain the liquor status of any given Ohio precinct. The Sunday sales questions are as follows:

- Question 1:** "Shall the sale of intoxicating liquor, of the same types as may be legally sold in this precinct on other days of the week, be permitted in this precinct for consumption on the premise where sold, between the hours of eleven a.m. and midnight on Sunday?"

This question deals specifically with the "unrestricted" sale of wine and spirituous liquor by the glass on Sunday at any business licensed under a D-1, D-2, D-3, D-4 or D-5 permit. The D series permit in Ohio allows the sale of beverage alcohol for on-premise consumption; in other words, opened containers. This question is commonly referred to as the unrestricted, over-the-bar question because there are no requirements other than the appropriate D-series permits for a business to meet to qualify for the privileges granted under this question.

- Question 2:** "Shall the sale of intoxicating liquor of the same types as may be legally sold in this precinct on other days of the week, be permitted in this precinct for consumption on the premises where sold, between the hours of eleven a.m. and midnight on Sunday, at licensed premises where the sale of food and other goods and services exceed fifty per cent of the total gross receipts of the permit holders at the premise?"

This question deals specifically with the "restricted" sale of wine and spirituous liquor by the glass on Sunday at any business licensed under a D-1, D-2, D-3, D-4 or D-5 permit. This question is commonly referred

to as the restricted, Sunday sales question because to qualify for the privileges granted by this question, a permit holder's place of business must meet certain restrictive requirements. Under this local option question, a permit holder must receive at least 50% of his total gross receipts from the sale of food and other goods and services. This question is commonly used for restaurants because it has no effect on bars and taverns. In effect, a restaurant may qualify for Sunday privileges under both the unrestricted—A question as well as, the restricted—B question.

Question 3: "Shall the sale of wine and mixed beverages of the same type as may be legally sold in this precinct on other days of the week, be permitted in this precinct for consumption off the premises where sold, between the hours of eleven A.M. and midnight on Sunday?"

All Sunday sales questions are used to extend current permit privileges to Sunday. These questions can be asked for privileges to begin at 10:00 a.m. or at 11:00 a.m. Passage of a Sunday local option within a precinct that is dry for weekly sales will not grant privileges for beverage alcohol sales on Sunday. Upon passage of a Sunday local option a permit holder must receive a D-6 permit from the division of liquor control to extend his/her license. Ohio's quota system does not govern D-6 permits, and they are available to all permit holders upon voter approval.

Suppose you own a convenience store, carryout, or a small neighborhood sports pub and would like to sell beer on Sunday. Which question would you ask? *The answer is voter approval of ANY Sunday sales local option question will permit beer sales.

According to Ohio law, Sunday beer privileges are automatically granted to anyone holding a permit which was issued from the State of Ohio prior to April 15, 1982. The privilege is '*grand fathered*' in with *old-issue* permits. Anyone granted a permit originally issued after April 15, 1982 is operating under a '*new-issue*' permit. New issue permits do not automatically receive Sunday beer privileges. To receive Sunday beer privileges under a new-issue permit *any one (1)* of the seven Sunday sales local option questions must be approved by the voters in the precinct where the business is located. Upon voter approval of any Sunday local option question, Sunday beer sales will automatically be granted to all new-issue permits located within that precinct without the issuance of a D6 Sunday permit. A D6 is not required to sell beer on Sunday but is required to sell any other type of beverage alcohol.

If the holder of a new-issue permit is located within a precinct which has previously approved one of the Sunday local option questions, Sunday beer privileges are automatically granted to that permit at the time the permit is issued or transferred. This also holds true for new-issue permits transferred from a Sunday dry precinct that previously were restricted to Monday through Saturday sales only.

V. LOCAL OPTIONS AFFECTING A PORTION OF A PRECINCT

There are also special local option questions that *will not* affect existing permit holders in precincts that have had annexations, or have been involved in precinct realignment by the local boards of election. These issues can be used for all types of beverages for either on-premise sales or off-premise sales thereby eliminating the need for separate individual questions.

The upside to these questions is that other permit holders are not placed at any risk of losing their privileges should voters reject the issues. Likewise, use of these questions first would allow 2 consecutive attempts to make a dry area wet. The down side of the questions includes a single shot vote which either denies or grants all privileges and the potential for existing permit holders to campaign against a new business that is perceived as a threat to market share in an area. These questions are very poorly written and

can be very confusing to voters. Great care needs to be taken to ensure that they are only used when necessary.

Any one or all these questions may be placed on a local ballot. Oftentimes, a misunderstanding of the application and affect of specific local option questions results in ballot placement of all beer, weekly and Sunday sales questions on a single ballot. There has never been a single instance when all local option questions currently available under the law have been placed on a single ballot. However, no local option question may appear on any ballot if it does not also contain the names of candidates to be nominated or elected. Under Ohio law, local option questions are prohibited from appearing on special election ballots *and must appear during a primary or general election ballot.*

field resource management - Services Available **Local Option Petitioning & Campaign Development**

Local Option Campaigns

Typically, only about half of all local option issues on Ohioans' ballots result in passage. It's therefore extremely important that local options be approached in the context of winning as opposed to an effort to merely secure a vote on the issue. Many times, businesses make an ill-advised decision to simply seek a vote on a local option issue without plans to actively pursue voter approval of that issue.

By following the procedures outlined in this prospectus, Field Resource Management, Inc. will conduct a professionally managed local liquor option campaign that can be implemented anywhere in Ohio. Field Resource Management, Inc.'s local option election program can be comprised of the following components:

- I. Liquor Status Research and Filings
- II. Option Issue Petition Drives
- III. Campaign & Field Work Activities
- IV. Get Out The Vote

Each component is described below:

I. Local Option Liquor Status Research & Filings

Determining the need to conduct a local option election is a critical phase in accurately filing the required forms with the Ohio Department of Commerce/Division of Liquor Control. A rejection of a liquor permit application does not always indicate the true liquor status of a precinct. Many times, Field Resource Management, Inc. through its in-depth understanding of the effects of local options has been able to direct both the boards of election and the division of liquor control to a conclusion that an area is WET for liquor sales and the issuance of the applied for permit proceeds without the necessity of a vote.

If a local option election is necessary, Field Resource Management, Inc. files the appropriate forms required under law with the division of liquor control to preserve our client's rights to pursue a local option on the next available election ballot. All permit holder notification is then completed in a timely manner by Field Resource Management, Inc. as the petitioner of record. This service alleviates the client from fielding questions from noticed permit holders. Instead all questions are directed to the offices of Field Resource Management, Inc. where they are handled in a professional manner with accurate information.

II. The Petition Drive

An initiative petition drive is required to place each individual local option issue on the ballot. Signatures are collected from registered voters to indicate the community's willingness to place the issue on the local ballot. Field Resource Management, Inc. conducts an extensive door-to-door canvass in the affected precinct to obtain signatures sufficient to qualify the option issue(s) for the ballot. These canvassing efforts are conducted by the Field Resource Management, Inc. field staff, utilizing official voter registration lists to identify which households have supportive voters (and their names), as well as households with negative voters.

An essential component of the petition drive phase is the verification of all petition signatures with the county board of elections by Field Resource Management, Inc. On controversial local option issues, all petition signatures are matched against boards of election records to ensure their validity.

Field Resource Management, Inc. guarantees that its' petition drive efforts will collect and timely file enough valid, eligible voter signatures to qualify the necessary option issue(s) for the next available election ballot. On well over 1,000 local option issue petition filings, there has never been a successful legal challenge lodged against a Field Resource Management, Inc. local option petition.

III. Campaign & Field Work

Community support and participation are essential ingredients to a successful local option campaign. Every Field Resource Management, Inc. local option campaign is tailored to the community affected. The door-to-door canvass activities during the petition phase may be continued, but the cataloging of all supportive and negative voters is conducted by experienced campaign staff by telephone. Over the years, we have found this to be much less intrusive on the average voter and a much more accurate way of identifying support and opposition to liquor issues than a face-to-face interaction with voters.

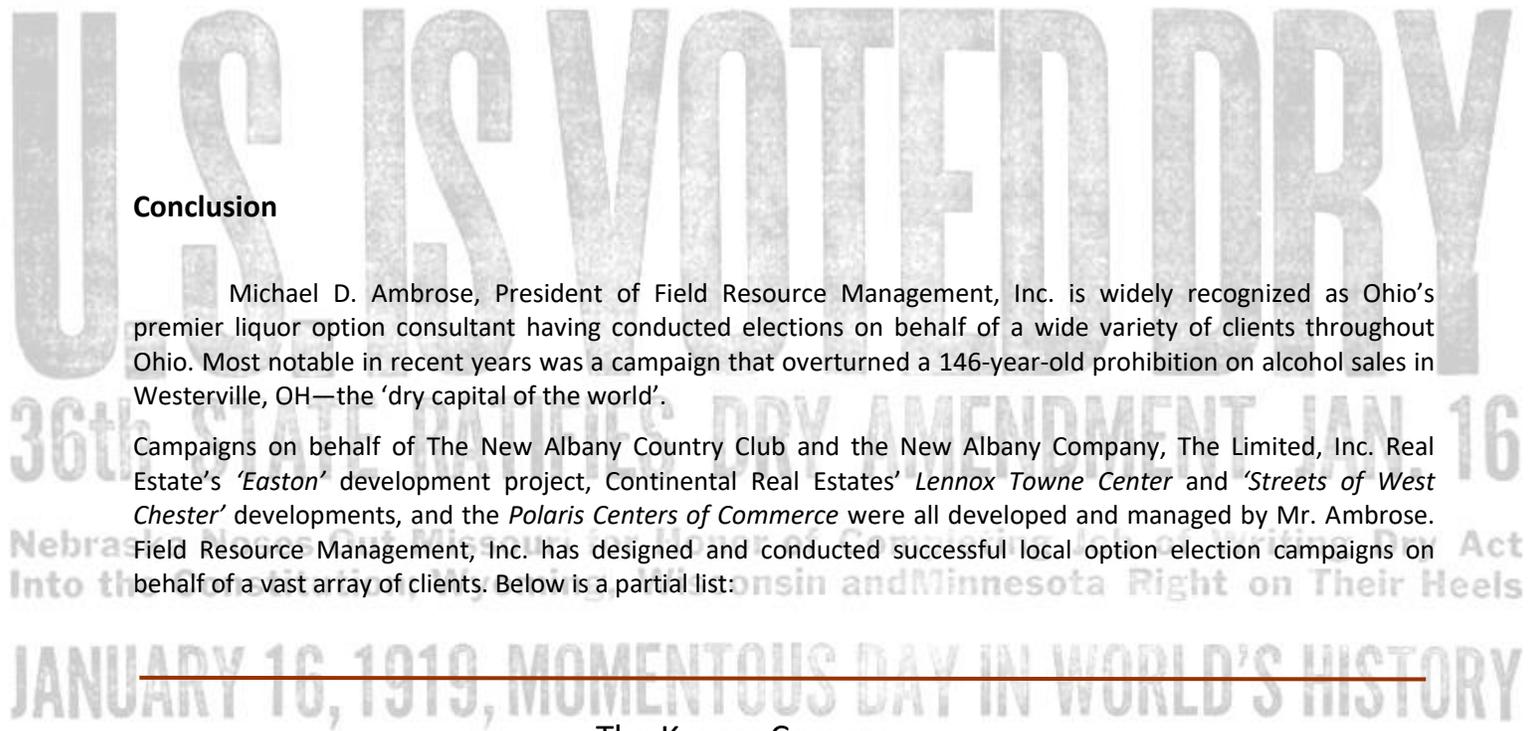
Supportive voters are identified by name and address. Once identified, negative voters are eliminated from the voter database and not contacted again. In that way, Field Resource Management, Inc. can shrink the universe of registered voters to be included in campaign communications to those voters who are most likely to support the option issue if they cast ballots. This also reduces the chances that organized opposition to the issue will form in highly negative situations.

The use of direct-mail in the campaign assures that each voter receives the same message. The concept of direct mail has proven very effective in controversial local option elections because of its unobtrusive nature and ability to "reach" targeted voters with a consistent message. Field Resource Management, Inc. often sends a minimum of 3 pieces of direct-mail to gain voter approval. Field Resource Management, Inc. may also design and distribute community-oriented literature door-to-door during this phase of the campaign. This literature stresses the benefits of voter approval to the community that is associated with the option issue(s).

The Get Out The Vote (GOTV) Effort

Having identified the positive voters in the precinct and personally contacting each one of them, it is important to influence them to go to the polls to cast a YES vote for the option issue(s). Field Resource Management, Inc. maximizes the turnout of option issue supporters by mounting a thorough Get out the Vote (GOTV) program on Election Day.

The GOTV program consists of election-eve reminders, door hangers, or direct-mail postcards to every identified supportive voter household. This is followed up by a final series of door-to-door or telephone canvasses on Election Day, personally contacting as many option supporters as possible and encouraging them to go to the polls to vote YES. When necessary and possible, the field staff will provide transportation to voters who are otherwise unable to visit the polls. However, this service is only provided when it appears critical to the success of the campaign due to the liability associated with the service.



Conclusion

Michael D. Ambrose, President of Field Resource Management, Inc. is widely recognized as Ohio's premier liquor option consultant having conducted elections on behalf of a wide variety of clients throughout Ohio. Most notable in recent years was a campaign that overturned a 146-year-old prohibition on alcohol sales in Westerville, OH—the 'dry capital of the world'.

Campaigns on behalf of The New Albany Country Club and the New Albany Company, The Limited, Inc. Real Estate's 'Easton' development project, Continental Real Estates' *Lennox Towne Center* and '*Streets of West Chester*' developments, and the *Polaris Centers of Commerce* were all developed and managed by Mr. Ambrose. Field Resource Management, Inc. has designed and conducted successful local option election campaigns on behalf of a vast array of clients. Below is a partial list:

The Kroger Company

Cost Plus World Market, Inc.
 dba: **World Market, Bed Bath & Beyond**

Costco Wholesale Corp
 dba: **Costco**

Kmart Corp
 dba: **Kmart**

United Dairy Farmers, Inc.
 dba: **UDF**

Darden Restaurants, Inc.
 dba: **The Olive Garden, Red Lobster, Smokey Bones BBQ
 Longhorn Steakhouse, Capital Grill, Seasons 52, Bahama Breeze**

Ruby Tuesday, Inc.
 dba: **Ruby Tuesday Restaurants**

Thomas & King, Inc.
Apple Ohio, Inc.
 dba: **Applebee's Neighborhood Grill**

Carlson Restaurants Worldwide, Inc.
 dba: **TGI Friday's**

Damon's International
 dba: **Damon's Grill**

Texas Roadhouse Grill

Tumbleweed, Inc.
 dba: **Tumbleweed Mesquite Grill**

U.S. IS VOTED DRY

36th STATE RATIFIES DRY AMENDMENT JAN. 16

Nebraska Noses Out Missouri for Honor of Completing Job of Writing Dry Act Into the Constitution; Wyoming, Wisconsin and Minnesota Right on Their Heels

JANUARY 16, 1919, MOMENTOUS DAY IN WORLD'S HISTORY

Ratification Accomplished in a Little Less Than Thirteen Months with Three States More Than the Required Three-Fourths. Resolution Gave Period of Seven Years for the Completion of Task. Remaining Ones Expected to Join Their Sister States in This Act, With Possible Exception of New Jersey. Initial Step in World-Wide Drive for Prohibition. State and National Leagues Now Give Earnest Attention to Law Enforcement Legislation

TWENTY-THREE STATES APPROVED ACT IN FIRST SIXTEEN DAYS OF 1919; IN 1918, 15; 9 IN CALLED SESSIONS

Colony With Which States United Gave Indication of the Popularity of The Great Work. Also Seen in Big Majority of Approving Votes of Legislators

TOTAL VOTE "FOR" ON DAY ACT APPROVED, 3,976 WITH TOTAL OF 822 VOTES AGAINST MEASURE

Reward of Twenty-Five Years Painful Work According to Anti-Saloon League Plans and Methods by the Temperance-Loving Citizens of the Nation

FIRST 36 RATIFYING STATES HAVE TOTAL POPULATION OF 62,033,935

This With 2,698,665 Population of Additional States Ratifying To Date Gives a Total of 64,732,600 Who, Through Their Legislatures, Have Declared for a Dry Nation

The long struggle to secure the passage of the act which will prohibit the manufacture and sale of intoxicating liquors in this country has reached its final stage. The act was passed by the National Prohibition Congress at its session in Columbus, Ohio, on August 13, 1919, and was signed by President Woodrow Wilson on August 17, 1919. The act was then sent to the states for ratification. On January 16, 1920, Nebraska became the 36th state to ratify the act, thus completing the process. The act will take effect on January 17, 1920.

A Wet World
The act will take effect on January 17, 1920. The act will prohibit the manufacture and sale of intoxicating liquors in this country. The act will also prohibit the importation of such liquors from foreign countries. The act will also prohibit the transportation of such liquors in interstate commerce.

