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Prohibition dominated Kansas political and social life for 68 years. In 1933 many Americans had come to the conclusion that national prohibition had been a failure. It was believed that Kansas, like many of her sister states, would join the wet parade and repeal national prohibition. Yet in a popular referendum held November 2, 1934, Kansans voted by an overwhelming majority of 90,000 to retain the state's prohibitory amendment. It was no longer necessary for Kansans to vote on national prohibition as repeal had already been ratified by the required number of states.

Between 1933 and 1948 something startling occurred in Kansas. A popular referendum in 1948 repealed the state's prohibitory amendment. The repeal amendment, banning the saloon but enabling the sale of packaged liquor, passed by 60,000 votes. By July, 1949, Kansas was legally wet for the first time since 1880.

This thesis examines the attitudes of Kansas between 1933 and 1948. A history of early prohibition is provided to afford the reader with an understanding of the traditional values and circumstances that induced Kansas to become the first dry state by constitutional amendment.

The time between 1933 and 1948 was a significant period in the struggle between modern ideas and traditional beliefs. In 1933 beer was sold openly in Kansas towns and cities. Juries refused to convict beer sellers. The 1937 Kansas legislature passed a 3.2% Beer Bill legalizing the sale of beer in Kansas. By 1945 many Kansans considered prohibition a mockery and demanded its repeal. Kansas World War II veterans returned from Europe and the Pacific with new attitudes toward liquor. They no longer viewed liquor with the same revulsion of their ancestors. Kansans demonstrated this changing attitude in the 1948 referendum.

THE WANING OF KANSAS
PROHIBITION: 1933-1948

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INTRODUCTION

On July 11, 1933, J.N. Dolley, former State Bank Commissioner, twice chairman of the Republican State Committee and Speaker of the House of Representatives in 1909, stated, "that Kansas must do her part in relieving the nation of a failure and a curse." He pledged his time and energy to eliminate the nation of the Eighteenth Amendment and to legalize beer in Kansas. Almost simultaneously Representative John Blood, of Sedgwick County, speaker protem of the 1933 house, made public a draft of a bill that he would offer in the coming special session providing for the sale of 3.2 percent beer in the state.¹

In 1933 many Americans believed that national prohibition had been a failure. Walter Davenport, author of an article entitled "The Vanishing Desert," believed that Kansas, like many of her sister states would join the wet parade and repeal national prohibition. Yet, in a popular referendum held November 2, 1934, Kansans voted by an overwhelming majority of 90,000 to retain the prohibition amendment in the state constitution.² It was no longer necessary to vote on the national prohibition question as repeal of the Eighteenth Amendment had already been ratified by the required number of states.

¹Topeka Journal, 11 July 1933.

²Clarence Woodbury, "What Happened To Kansas," American Magazine, 147 (January 1949), p. 115.

Fifteen years later Kansas voters went to the polls to vote on the 68-year-old struggle over prohibition. A 1948 popular referendum repealed the state prohibitory amendment. Only in Bourbon County was the vote 2 to 1 dry.³ The repeal amendment, banning the saloon but enabling the legislature to allow packaged liquor sales, passed by 60,000 votes.⁴ Therefore, by midsummer Kansas was legally wet for the first time since 1880.

The outcome of the 1948 referendum surprised many Americans. For generations, Kansas had been depicted outside the state as a "strait-laced spinster with a glass of ice water in one hand and a militant umbrella in the other."⁵ Between 1933 and 1948 something startling occurred in Kansas, this thesis is a study of the changing attitudes among Kansans.

The premise of this thesis is that prohibition in Kansas entailed a struggle between modern ideas and traditional beliefs. 1933 to 1948 is a significant period in this struggle. Beginning in 1933, Kansans witnessed a "waning of prohibition" as beer was sold openly in almost every city and town. The Kansas Supreme Court had ruled in July 13, 1933 that because the prohibitory amendment did not define "intoxicating" liquor in terms of percentage of alcohol it was

³"Kansas Wets Its Toes," Newsweek, 32 (15 November 1948), p. 26.

⁴"Kansas Capitulation," Time, 52 (15 November 1948), p. 8.

⁵Woodbury, p. 20.

up to juries in Kansas to declare whether a beverage was "in fact" intoxicating.⁶ Until the passage of the Plummer-Schrepel Bill in 1937, which legalized the sale of 3.2 percent beer, Kansas experienced anarchy concerning enforcement of its prohibition laws. For it proved impossible to get juries to agree that beer, whatever percentage, was intoxicating.

In 1945 Kansas received a severe blow to its prohibition law. On November 9, federal agents seized 955 cases of liquor with a retail value of approximately \$100,000.⁷ Later, on December 22, 1947, Melvin Hass was mistaken for an out-of-state bootlegger and his 1940 Lincoln coup was confiscated and he was fined \$200 for transporting liquor across the state border.⁸ The raid and the arrest of Hass set off a chain reaction that resulted in the referendum of 1948 and repeal of prohibition.

The surprising element of the "waning of prohibition" was, despite the enactment of more and more stringent dry laws, the majority of Kansans were beginning to consider prohibition hypocritical and were demanding a change in the 68-year-old amendment. Businessmen in Wichita organized a "It Could of Happened To Me" Club to protest the injustice to Hass and the hypocrisy of the ancient prohibition amendment.⁹ In Kansas it

⁶William G. Clugston, Rascals in Democracy, (New York: Richard R. Smith, 1940), pp. 287-289.

⁷Topeka Daily Capital, 10 November 1945.

⁸"Nine Little Bottles," Time, 51 (12 January 1948), p. 12.

⁹"Nine Little Bottles," p. 18.

had become the established law that it was a greater crime to use an automobile for hauling liquor than to use it for committing murder, rape, or robbery.¹⁰

William Allen White, "long a bell weather in the cause of creek water,"¹¹ wrote in 1937 that, "Something new and strange is coming over the Kansas attitude toward the liquor traffic."¹² The purpose of this thesis is to examine exactly what did come over Kansas between 1933 and 1948.

¹⁰Clugston, p. 204.

¹¹Topeka Journal, 11 July 1933.

¹²William Allen White, "Kansas and Prohibition," Kansas Magazine, (1937), pp. 50-52.

Prohibition Beginnings

Any examination of prohibition in Kansas between 1933 and 1948 needs to be prefaced with an explanation of how Kansas came to be the first state to adopt constitutional prohibition in 1880 and to adopt some of the most stringent "bone dry" laws of any in America.

Following the temperance mood of the nation many early settlers of Kansas wrote stringent prohibitory laws into their town charters. When the Wyandotte Constitutional Convention met in 1859 the issue of the liquor traffic was introduced. John Richey, a delegate from Shawnee County, introduced a resolution to authorize the legislature "to prohibit the introduction, manufacture, or sale of spirituous liquors within the state."¹³ The motion was referred to the committee on the Legislative Department. When it came up for discussion twelve days later, it was strongly opposed by Solon Thatcher, a prominent free-state leader, on the ground that it would be a mistake to load the Constitution with special legislation provisions that might tend to defeat the Constitution when it came up for ratification. Thatcher was supported in his position by J.N. Winchell, president of the convention, who told the delegates that such an enabling clause was unnecessary as the legislature would have that power anyway. The

¹³Clara Francis, "Prohibition in Kansas," History of Kansas: State and People, William E. Connelley, comp., (Chicago and New York: The American History Society, Inc., vol. II, 1928), p. 685.

resolution was then withdrawn and the Constitution ratified without any statement on the liquor question.¹⁴

Several organizations played a prominent part in the drive against the liquor traffic. The Independent Order of Good Templars was the earliest organization in Kansas and it continued to be an active fighting force against liquor for many years. The first lodge was organized the year Kansas was recognized as a territory and the state organization was formed in 1858. This organization along with the Kansas State Temperance Society, organized in 1861, actively petitioned every legislature from 1861 to 1879 for the passage of a prohibitory law.¹⁵ Later the Woman's Christian Temperance Union was organized. These groups were militant advocates of prohibition and its stringent enforcement.

Since the 1850's, then, when local option laws prohibited the sale of liquor to "any man against the known wishes of his wife," and several temperance organizations were formed, Kansas had made it tough--but not impossible--for a man to get a drink.

The activities of these groups eventually stirred up the anti-prohibitionists to protest the movement. In January, 1872, a convention of "German-speaking" citizens assembled in Topeka to head off a movement within the Republican Party to get the party to endorse prohibition. In 1874 the Republican

¹⁴Francis, p. 686.

¹⁵Cecil Howes, "Prohibition in Kansas," Kansas Teacher, 55 (October 1946), p. 96.

State Convention recognized the prohibition movement by including it as one of its planks in its platform. This provision did not specifically endorse prohibition; it merely condemned drunkenness.¹⁶

Public sentiment was becoming more favorable to the cause of temperance. On September 10 and 11, 1874, a convention was held at Leavenworth for the purpose of organizing a Temperance Party. At that convention a ticket was nominated headed by Dudley C. Haskell as the candidate for Governor. Haskell declined to run, as did many of the other nominees, and the ticket put into the field was not strong enough to create strong support.¹⁷

The Kansas Grand Lodge of Good Templars passed resolutions endorsing the Leavenworth convention and recommending that the members of the subordinate lodges labor to secure the election of the Temperance Party ticket. The movement, however, was largely a failure and the strong endorsement of temperance principles in the Republican state platform of that year discouraged further attempts to organize a separate party. Temperance supporters naturally looked to the Republican Party in Kansas to carry out their principles and in this they were not to be disappointed.¹⁸

¹⁶Marvin A. Harder and Russell Getter, Electoral Politics in Kansas, (Lawrence: The University of Kansas, 1983), pp. 10-11.

¹⁷Francis, p 695.

¹⁸Francis, p. 695.

Public sentiment was becoming more favorable to the cause of temperance. A deeper sense of responsiveness was being manifested by legislators. The 1875 legislature introduced 6 different bills, 3 in the Senate and 3 in the House, to amend the law to regulate dramshops and taverns, and to control the sale of intoxicating liquors.¹⁹ These bills were either killed in committees or died on the calendar.

Renewed effort was made in 1876 to secure legislation for restraint of dramshops. House Bill 216 was introduced and passed in the House to strengthen the 1868 dramshop act. Democratic Representative George W. Glick protested that "a prohibitory liquor law, wherever tried, has been a failure, and has not accomplished its purposes."²⁰ He felt that his constituents did not desire any change in the liquor law.

A House member from Leavenworth moved to reconsider the vote on House Bill 216, but his motion was lost. The Senate killed the bill two days before final adjournment of the legislature.

In the 1877 legislature, temperance forces were again active. A bill was introduced in the Senate to amend the dramshop law of 1868. It passed and was sent to the House, where it was referred to the Judiciary Committee and never heard of again. Petitions were presented in both branches of the legislature asking for favorable

¹⁹Francis, p. 696.

²⁰Francis, p. 696-697.

consideration of this bill, but they came to nothing.²¹

While all measures attempting to amend the dramshop bill failed, considerable attention had been paid to the issue of the liquor traffic.

1878 was an election year and the temperance people all over the state were interested in the candidacy of John P. St. John for Governor. St. John had been an ardent advocate of prohibition while he was a member of the State Senate.

Earlier that year he had been elected president of the Kansas Temperance Union.²² The following year he was re-elected to that post, and eleven months later he became president of the National Christian Temperance Union.²³

The Republican platform of 1878 recognized the growth of temperance sentiment in the party by inserting the innocuous resolution:

That we hold it to be a solemn obligation of the electors of Kansas to be earnest in securing election to all positions of public trust, of men.... who will labor earnestly for the enactment of such laws as the best interest of society, temperance and good order shall demand.²⁴

St. John's nomination for and election of governor must not be construed as a victory for the prohibition forces. He obtained office of governor as the result of a political friend in the Republican Party. George T. Anthony had been

²¹Francis, p. 697.

²²The Kansas Temperance Union had been organized as the Kansas State Temperance Society.

²³Harder and Getter, p. 11.

²⁴Francis, p. 697.

lected governor in 1876. He was a man of great ability and undoubted integrity, but his dominating character incurred the opposition of men and interests who insisted on dominating the politics of the state. They did not want a governor with a will of his own who refused to be an efficient errand boy or merely an important cog in a political machine. There was another factor that contributed largely to Governor Anthony's political overthrow. He had quarrelled with his distinguished cousin, Colonel Dan Anthony, who was also a man of great ability and even more dominating character than the governor. Who was at fault in the quarrel is unknown, but a match between two men of such powerful wills is rarely amiably settled.²⁵

Instead of granting Anthony an uncontested renomination, as had been the political custom, there was a bitter fight. His principal opponent was Colonel John A. Martin, editor of the Atchison Champion and later governor of the state. St. John was also a candidate. He had enough votes to prevent the nomination of either Anthony or Martin, but his only chance of being nominated himself was that one or the other of the leading candidates would throw his votes to him. That was just what finally happened. After several ballots the Anthony supporters decided that his nomination was impossible and threw their strength to St. John. He was nominated on the 17th ballot by a vote of 156 to 128 for Martin.²⁶

²⁵T.A. McNeal, "Prohibition in Kansas," Kansas Magazine, (1934), p. 20.

²⁶McNeal, p. 20.

When St. John was nominated and even after his first election, political leaders had no serious thought of constitutional prohibition. St. John was known locally as a strong temperance man in favor of more stringent control of the liquor traffic, but he was expected only to support a statewide law to replace the local option law, which had been operating with indifferent success. Accounts of the submission of the prohibitory amendment contend that opponents of prohibition supported it to head off a stringent law advocated by Governor St. John and other temperance leaders. They believed the amendment would certainly be defeated in a popular vote, but they did not really expect that it would even get as far as submission. The amendment passed the Senate, but was expected to defeat it in the lower House, and came near doing so. However, it passed and overshadowed all other political questions in the 1880 campaign. It was evident, however, that the Republican leaders were leery of committing the party to prohibition, and the platform adopted at the 1880 Republican State Convention made no mention of prohibition. However, the Republican Party was associated with the temperance movement by this time and Governor St. John personally supported the amendment. The vote in the general election was 92,302 for and 84,304 against adoption.²⁷

Opponents of statewide prohibition contended that the amendment was not legally adopted because it had not received a majority of all the votes cast, which was true. Approxi-

²⁷McNeal, p. 21.

ately 25,000 voters abstained on the amendment. However, the Kansas Supreme Court held that all that was necessary was that more electors vote for than against it.²⁸

Conditions in Kansas after prohibition became effective in May, 1881, clearly revealed the enforcement problems. Drugstores became prosperous with brisk sales of liquor. The New York Tribune noted in November, 1886, that 215 different reasons had been cited by patrons in Osage County for purchasing alcohol, including "a bilious headache," "dry stomach," "congestion of the lungs," and "for making a mixture to wash apples against rabbits." The saloon soon reappeared in large numbers.²⁹

Prohibition violations led to the unusual career of Carry A. Nation of Medicine Lodge. She started her campaign at Kiowa in June, 1899, after a voice told her: "Take something in your hand, and throw at those places in Kiowa and smash them."³⁰ She cast her carefully collected stones with great skill in three Kiowa saloons. At Wichita, early on the morning of December 27, 1900, she went to the Carey Hotel Annex, where she threw two stones with unfailing accuracy at the nude picture, "Cleopatra at the Bath," and smashed the mirror that covered almost one entire side of the large room with a billard ball. By 8:30 AM that day she was arrested.

²⁸McNeal, p. 21.

²⁹Emory, Lindquist, "Kansas: A Centennial Portrait," Kansas Historical Quarterly, XXVII (Spring 1961), pp. 32-35.

³⁰Carry A. Nelson, The Use and Need of the Life of Carry Nation, (Topeka: F.M. Steves and Sons, 1908), p. 133.

Never mind, you put me in here a cub, but I will go out a roaring lion and I will make all hell howl she told the jailer as the gate closed on her cell".³¹ When released from the Michita jail, she went to Enterprise to continue her solo performance of good works.³² Carry Nation, personally, never tried up a single saloon in Kansas, but she dramatized the prevalence of the joints.

Illicit saloons continued to operate in nearly all Kansas cities by simply paying the city a monthly fine. The two county officers whose job it was to enforce the prohibition law were the county attorney and sheriff. In many counties the wets managed to elect men who pledged not to enforce the law. In the cities where dries did manage to elect honest officers, they were oftentimes ostracized and threatened for enforcing the law.

Prohibition became an issue in the early twentieth century. The Democratic Party had furiously condemned prohibition every two years until 1906. The party wanted to nominate Colonel W.A. Harris of Leavenworth County for governor. He refused to accept the nominations unless his party declared in favor of prohibition enforcement. It was an honest and courageous stand, yet quite possibly it defeated him. He lost the election by about 2,000 votes. The dripping wet city of Leavenworth, normally Democratic by a considerable

³¹Nation, p. 133.

³²Lindquist, p. 33.

majority, went against him.³³ However, he took prohibition out of politics more than any other one man.

Juries began to convict violators, and the sentiment in favor of the law grew stronger until it was generally acknowledged that the prohibitory law was as well enforced as the general run of laws. Consequently the legislature passed a law that attempted to abolish the illicit saloons. This law brought in bootleggers and provided a bonanza for liquor dealers just across the borders in wet states. The "wettest block in the world" was one of a solid row of saloons in Kansas City, Missouri, just across the line from dry Kansas.³⁴

In 1917, the progressive legislature passed the famous Bone Dry Law. It closed the loopholes in the earlier prohibition laws, made it a prison offense to possess as much as one ounce of liquor, or transport liquor in an automobile. The law stated that an automobile seized with liquor had to be confiscated and sold by the sheriff, and the money turned over to the school fund. The state Supreme Court upheld a provision of the law that stated a car could be seized, and confiscated and sold even though it had been used to transport liquor without the knowledge or consent of the owner.

National prohibition was adopted in 1919 and repealed in 1933. During national prohibition Kansas was as wet as any other state. Illicit stills were operated in virtually every county. One brand of liquor, called "Deep Shaft" because it

³³McNeal, p. 22.

³⁴Woodbury, p. 21.

as manufactured in abandoned mines in southeast Kansas, became known nationwide. Some of the largest operators of speakeasies in New York City purchased "Deep Shaft."

Adoption of prohibition was no sudden outburst of citizens against the liquor traffic or a movement of a few fanatics; nor should it be attributed solely to a puritanical desire to legislate morals. A crystallization of slowly developed sentiment of a majority of Kansans against the liquor traffic explain the 1880 referendum.³⁵

Contemporary sources indicate the real social and economic evils of liquor on the Kansas frontier. The grog shops and saloons were scarcely compatible with the ideals of Kansas. Prohibition was an attempt to legislate those evils. However, the failure of national prohibition in 1933 forced the state to examine its traditional beliefs. It was obvious that the new generation did not have the same revulsion toward liquor as the previous one. Yet, Kansans voted enthusiastically in 1934 to retain state prohibition to warrant the conclusion that they desired the return of the saloon. W.A. White wrote in 1937:

The thought of a saloon in a Kansas town would create revolt. But liquor is served in too many homes and the bootlegger goes too brazenly about his business, and beer signs wave too gaily in the Kansas breezes to warrant the assumption that public opinion in Kansas is what it was in 1880, or even in Carrie [sic] Nation's day or the first decade of the new century.³⁶

³⁵Francis, p. 711.

³⁶White, p. 50.

In 1933 a new attitude had come over Kansas. The
prohibitory amendment was not repealed until 1948.

This thesis analyzes the changing attitudes of Kansans in
the interim.

Kansas and National Repeal

In 1932 a new and strange attitude was coming over Kansas. State delegates to both the Democratic and Republican national conventions proposed wet planks. In Chicago, on June 19, 1932, eight of the 20 Democratic delegates voted for outright repeal of the Eighteenth Amendment. At the Republican convention four of the 20 Republican delegates went wet.³⁷ While the Democratic and Republican wet planks differed, the Kansas votes created quite a sensation among the Eastern wet delegates who regarded the state as hopeless. For "bone-dry" Kansas to break away from prohibition was thought too good to be true by the wets.

The votes at the conventions may have indicated the new and strange attitude in Kansas, but it was slow to evolve. Democratic Governor Henry Woodring felt that had the delegation to Chicago been permitted to vote under the unit rule on the question, the result would more nearly have represented Kansas; he believed that the prohibition issue would be the least important of all the issues in Kansas.³⁸ Yet the Newton newspapers claimed that "this issue will be the one nearest the people and of greatest concern."³⁹

The Kansas gubernatorial election produced three can-

³⁷Topeka Daily Capital, 1 July 1932.

³⁸Topeka Daily Capital, 8 July 1932.

³⁹Topeka Daily Capital, 5 July 1932.

ates who unequivocally supported national prohibition.

Republican candidate Alfred M. Landon was clear on the issue, Governor Harry H. Woodring, a Democrat, oscillated, and Independent candidate, Dr. John R. Brinkley, promised that if elected "he would enforce the prohibitory laws as they had never been."⁴⁰

On September 30, 1932, a month before the Kansas general elections, 60 of the 99 federal prohibition agents who had made wholesale raids on night clubs two days before made a second thrust at 18 different "liquor joints."⁴¹ This event demonstrated the laxity of the Volstead Act to many Kansans and caused all three candidates to begin defining their position on repeal. The prohibition issue heated up as the election drew nearer. Landon on many occasions criticized Governor Woodring for his "evasive and hypocritical" treatment of prohibition.⁴² Governor Woodring had declared that his position on prohibition was dry, yet he espoused the national Democratic repeal platform. Meanwhile, Brinkley was beginning to soft-pedal the prohibition issue. The Republican state chairman, Frank Carlson, claimed, "Alf Landon, the Republican candidate, is the only Kansas governorship candidate of the three to give the voters an unequivocal dry stand."⁴³

⁴⁰Topeka Daily Capital, 1 July 1932.

⁴¹Topeka Daily Capital, 1 October 1932.

⁴²Topeka Daily Capital, 13 October 1932; and 23 October 1932.

⁴³Topeka Daily Capital, 23 October 1932.

Democratic attempts to defend Woodring as a dry were directed by Paul C. Aiken, chairman of the speakers' bureau of the Democratic State Central Committee, "who ordered every opportunity to reiterate the fact that Governor Woodring is a dry."⁴⁴ According to the Democrats, the Republicans had decided to drag prohibition back into the campaign to cloud the issues.

A close study of the 1932 gubernational election shows that prohibition was not the major issue. The most important issue in most Kansans mind at the time was the proposed graduated income tax amendment. Landon and Woodring had both approved of the amendment. Their positions on a tax limitation amendment were different. Woodring supported it, Landon opposed it.

Woodring lost his bid for re-election, in spite of the fact that Franklin Roosevelt carried the state by 74,706 votes, and in spite of the fact that his total vote in 1932 was 55,773 votes greater than it was in 1930. Several reasons account for the defeat of Woodring. His handicaps for re-election were as formidable as Landon's prospects for election were favorable. At that time, no Democrat had been re-elected governor. The increase in Woodring's vote reflects the larger vote turnout of a presidential election year over a midterm election year. The race was a three-cornered one with Brinkley on the ballot as an Independent. He increased his total by 61,329 votes, an increase of 1.1 percent over his 1930

⁴⁴Topeka Daily Capital, 26 October 1932.

percentage.⁴⁵ The fact that Brinkley's name appeared on the ballot in 1932 probably helped Landon's cause. It may also have hurt Woodring's chances. The Republican Party had also nominated a candidate that was acceptable to members of both factions of the party. Finally, Woodring's administration had done little to relieve the economic plight of Kansas.

The election was very close nonetheless. Landon's total vote was only 5,027 votes greater than Woodring's. Woodring might have been re-elected had Brinkley chosen not to run in 1932; the later undoubtedly siphoned off protest votes that might have gone Democratic, in view of the strong Democratic tide running in the nation. But this is pure conjecture.

Landon conducted an effective campaign, first concentrating his attack upon Woodring, then upon Brinkley. Arthur Capper, editor of the Topeka Daily Capital, felt that Landon's campaign "vitalized the Republican battle and stimulated Republican workers all over Kansas."⁴⁶

The Kansas Legislature elected in 1932 had a Republican majority with 23 of 40 senators and 65 of 125 representatives.⁴⁷ Kansas voters adopted the graduated income tax amendment 155,788 to 127,039.⁴⁸ The capital newspapers seemed to agree that Governor Landon's legislature of 1933 was one of the most effective in state history. A.L. Shultz of the

⁴⁵Harder and Getter, p. 44.

⁴⁶Topeka Daily Capital, 1 November 1932.

⁴⁷Topeka Daily Capital, 10 November 1932.

⁴⁸Topeka Daily Capital, 11 November 1932.

Topeka State Journal compared it most favorably with the legislatures in other Plain states, which, he said, were in the hands of the radicals.⁴⁹ The Kansas legislature proved to be conservative.

Landon's first message to the newly elected legislature declared that an emergency existed, taxes needed to be reduced and economy practiced in all branches of government, and now. He devoted most of his message to taxation and declared that "taxes on property must be reduced, and that the largest percentage of relief must be given where relief is most needed--that is to real estates."⁵⁰ Landon had the support of both parties, and was given almost dictatorial power over banks, trust companies, insurance companies, and building and loan associations. Factionalism in the legislature was not allowed to delay the enactment of needed legislation. Landon and the state bank commissioner worked in close cooperation with the federal government to save Kansas banks. State banking facilities were placed in the hands of the government and commissioner for two years. An emergency bill permitted depositors to take control of weakened banks to segregate frozen assets in a trusteeship, and another bill directed the courts to fix prices in real estate foreclosures. These bills

⁴⁹Topeka State Journal, 2 March 1933.

⁵⁰Topeka Daily Capital, 12 January 1933.

re regarded to be the most significant items of legislation the session.⁵¹

Landon's economy program was adopted. He asked for and received an 18 month redemption period on mortgage foreclosures that could be extended for six months. Taxes were drastically cut, and so were fees.⁵² Deficiency judgments on real estate foreclosures were abolished, and real estate assessment was reduced 20 percent. Penalties and interest on real estate sold for taxes were also abolished.⁵³

With the 1932 adoption of the income tax amendment, the 1933 session provided the state with its first income tax. The Lane Duck Amendment was ratified. Some inspection departments were consolidated, and the Kansas Legislative Council was established. All these acts were of lasting importance.⁵⁴

⁵¹William Frank Zornow, Kansas: A History of the Jayhawk State, (Norman: University of Oklahoma Press, 1957), p. 251.

⁵²One of the primary issues in the 1932 election was the reduction of the license tags fee.

⁵³Zornow, p. 252.

⁵⁴Zornow, p. 252.

1933: A Struggle for Kansas Prohibition

The election of Franklin Roosevelt and a Democratic Congress caused some concern among dry Kansans. The Democratic Party had run in 1932 on a "dripping wet" platform that called for the outright repeal of the Eighteenth Amendment. The 73rd Congress began on January 3, 1933; and a Senate sub-committee approved a prohibition repeal resolution two days later, but agreed to "protect" states that wanted to remain dry, and allow Congress to "legislate against the return of the saloon."⁵⁵ The previous Congress had begun work on modification of the Volstead Act to allow for the return of beer.

The Kansas legislature of 1933 focused its attention on economic relief. Curtailment of government spending and the enactment of the new graduated income tax took up most of the legislature's time. Yet, the liquor question was not avoided. Several bills were introduced to modify the "bone dry" law. One of the major issues was whether Kansas, if Congress adopted the 21st Amendment, would call a special convention to consider the repeal of the Eighteenth Amendment.

This section focuses on Kansas attitudes toward national repeal and the events that lead to the vote on the state prohibitory amendment in 1934. Kansans were probably indifferent to the outcome of national repeal. The primary

⁵⁵Topeka Daily Capital, 13 October 1932.

ern of Kansans during 1933-1934 was the question of beer the fate of state prohibition.

To understand the attitudes of Kansas drys the theory which prohibition was based must be recalled. Many drys argued that prohibition would be universally accepted and practiced when a generation came to maturity that had been raised on temperance education and in a sober and saloonless society. The advantages of prohibition would be obvious to progeny, who would naturally recoil against drinking and its evils.

A flawless theory, it failed in practice. The problem was that the youth of Kansas had no experience with "the old Shibboleths upon which the Kansas amendment was won."⁵⁶ Many youth "thought that the only reason the prohibitory amendment was adopted was to deprive them of good liquor at moderate prices and oblige them to drink the bootlegger's evil wares at monstrous figures."⁵⁷ This dry argument turned the earlier conclusion upside down. The drys now argued that prohibition begets drinking. Not all drys would agree with this argument, but they would agree that by 1933 drinking had become more popular and had little social stigma attached to it.

Results of the largest poll conducted in American history again indicated that Kansas was a dry anomaly. According to the poll conducted by the Literary Digest, the country had

⁵⁶Henry J. Allen, "Kansas Bewildered by Demon Rum, "New York Times Magazine, (15 April 1934); pp. 4-5.

⁵⁷Allen, pp. 4-5.

...me wetter in four years, demonstrated by a 40 percent
 ...ality in favor of repeal, of the Eighteenth Amendment
 ...le 29 percent supported modification, and 30 percent wanted
 ...left unchanged. Kansas remained one of the driest states
 ...the nation, and was only one of three with a dry majority.
 ...the Kansas respondents, 42,301 were dry, 17,148 wanted
 ...modification, and only 13,891 favored repeal.⁵⁸ The national
 ...putation of Kansas as among the driest of states in
 ...itudes appeared well founded.

In 1933 most temperance leaders were opposed to any
 ...tion by the state legislature on the issue of liquor. Mrs.
 ...red Yeiten, secretary of the WCTU, expressed the opinion of
 ...st dries when she wrote Governor Landon that "we know our
 ...aws are not enforced as they should be, but a good law poorly
 ...nforced is better than no law."⁵⁹

The Topeka Daily Capital, on January 19, 1933, printed
 ...two columns on the struggle that was emerging between the wets
 ...and dries. The Anti-Prohibition Society of Kansas held a
 ...meeting in Topeka at the Hotel Kansan, where they proclaimed
 ...that one of its chief aims was the repeal of the prohibitory
 ...amendment. Representative Hayes of Ellis County announced
 ...that he would introduce a bill for that purpose.⁶⁰ Tom Hartey

⁵⁸"The Huge Poll's Final Report: All Records Outdone,"
The Literary Digest, 117 (24 May 1930), p. 8.

⁵⁹Mrs. Fred S. Yeitan to Alfred M. Landon, 25 January
 1933, Alfred M. Landon Papers: Box 6, prohibition, (Kansas
 State Historical Society, Topeka). Hereinafter cited as Landon
 Papers.

⁶⁰Topeka Daily Capital, 19 January 1933.

Wichita, who had been a recent candidate for the United States Senate on a wet plank, declared law enforcement was breaking down, and respect for all laws were at a low level, due to violations of the Eighteenth Amendment.⁶¹

A meeting of Kansas ministers, held the same day as the Anti-Prohibition Society, had a committee of 15 ministers draft a resolution urging the enforcement of prohibition laws. . . Presented to Governor Landon and Attorney General Roland Lynton, the resolution stated:

It is the sense of this body that the present problem of prohibition is not the prohibition law (or its enforcement), but the lack of enforcement. We urge the legislature to enact any laws that will assert in the prohibition of the liquor traffic.⁶²

By 1933 Kansas dries believed that strong enforcement could save the cause of prohibition; while Kansas wets were convinced that prohibition could not be enforced and was a failure.

Several minor bills were introduced in the legislature to modify existing prohibitory laws.⁶³ The majority of these bills were killed in committees or failed to pass in both houses. The Governor assured the secretary of the WCTU that

⁶¹Topeka Daily Capital, 19 January 1933.

⁶²Topeka Daily Capital, 19 January 1933.

⁶³On February 1, 1933, bills were proposed to deny county attorneys the \$25 fee for convictions in liquor violations, permit physicians to prescribe liquor for the various and sundry ailments of their patients, and modify the existing law on the confiscation and sell of an automobile used to transport liquor.

and the Republican Party were "unalterably opposed to any modification of our liquor laws which would weaken them."⁶⁴

On February 15, 1933, the issue of the state prohibitory amendment came up when Democratic Senator Charles Miller of Leavenworth proposed that the people be given an opportunity to vote on it. The legislature rejected the proposal, and resisted all attempts to bring the question before the people until the fall of 1934.

The primary obstruction to state repeal of the 18th Amendment was from the Kansas House of Representatives. By a 34-54 vote on March 20, the House refused to authorize the machinery to enable a convention on repeal. This was contrary to the Senate, which voted 38-0 to allow a convention. The outcome disappointed Governor Landon, who opposed repeal but believed "the people have a right to vote on any question of major importance such as this."⁶⁵

Kansans were not allowed to express a preference in 1933 on the 21st Amendment, which was ratified by the required number of state conventions by December 1933. Yet they would be given an opportunity to vote in the next general election on the state constitutional prohibitory amendment. Both houses of the Kansas legislature voted in a special session held in October, 1933, to place the issue on the ballot.

⁶⁴Alfred M. Landon to Mrs. Fred Yeiten, 25 January 1933, Landon Papers.

⁶⁵Topeka Daily Capital, 21 March 1933.

ween 1930, when Kansans had overwhelmingly endorsed
hibition in the Literary Digest poll, and the 1934
erendum, the Kansas complexion changed on prohibition.

1933: Beer, A Leading Question

Before an examination of the 1934 referendum it is important to examine the attitudes of Kansans and the events during the summer of 1933. These attitudes and events dramatically altered the status of the state's bone dry laws; and eventually resulted in the repeal of the prohibitory amendment in 1948.

In the spring of 1933 the federal government authorized the sale of 3.2 percent beer. David Chapman of Wichita, wishing to challenge the bone dry laws, immediately applied for a federal liquor license.⁶⁶ Many more Kansans would apply for licenses. Representative John Blood of Sedgwick County, speaker protem of the House, made public a draft of a bill, that he planned to submit at the special session of the legislature, to allow the sale of 3.2 beer.⁶⁷ Colonel J.N. Dolley, former speaker of the House in 1909 and the key man in the Walter Roscoe Stubbs organization, announced that he would take to the stump to repeal prohibition and bring beer to Kansas.⁶⁸ Beer began to be sold and consumed openly in all sections of the state.

Wichita, declared the state newspapers, was in open revolt against the state bone dry laws. Many of the beer

⁶⁶Topeka Daily Capital, 25 June 1933.

⁶⁷Topeka Daily Capital, 11 July 1933.

⁶⁸Topeka Daily Capital, 11 July 1933.

...ers had agreed that they would sell at the same time and
...ain counsel for defense of anyone who might be arrested and
...ed in district court. The funds for defense were said to
...ve been raised by an assessment against those sellers.

... Wichita newspapers advertised 3.2 beer and urged such
...les for the purpose of calling a special session of the
... legislature to repeal all the liquor laws. Attorney General
...ynton sent a telegram to the sheriff and county attorney of
...dswick County declaring: "Under Kansas law the sale of
...ree percent beer is prohibited," and "it is the duty of law
...nforcement officers to enforce the laws as passed by the
...egislature."⁶⁹

On June 27, 1933 approximately 100 places in Sedgwick
County sold 3.2 beer to "show the futility" of the states
prohibitory statutes. Although beer was sold openly in many
places earlier, it was estimated that twice as many had it on
sale. One restaurant, which yielded 21 bottles in an earlier
raid had it on sale again. The proprietor, Isidure Lukin,
informed the police after his arrest that he would continue to
sell beer when he made bond.⁷⁰

According to Chief Justice William A. Johnston, "it was
the idea of these men to make law violation so widespread and
general that the peace officers will find the task of rounding
up the violators beyond their power."⁷¹ Wichita, which had

⁶⁹Topeka Daily Capital, 27 June 1933.

⁷⁰Topeka Daily Capital, 27 June 1933.

⁷¹Lawrence Journal-World, 29 June 1933.

ever been fully committed to the observance of prohibitory laws, was inviting the rest of Kansas to join in an effort to repeal the laws. This move, along with the actions of Fred Clugston and Perry Lundry of Reno County, brought about a slowdown on what Kansas was going to do about beer and repeal.

Kansas faced a major dilemma between April and July. All classes of people began drinking beer with such gusto that the city leaders didn't know which way to turn. In the summer of 1933 the Kansas Supreme Court made a landmark decision that altered the course of prohibition in Kansas. It ruled that the whole question relative to beer as an intoxicant was a matter of fact for a jury to determine, as the legislature had never fixed a maximum alcoholic content for an intoxicating liquor.⁷² Local juries refused to convict beer sellers. The sequence of events and arguments that lead to that decision deserve attention.

That decision let down the bars so low that prosecuting officials quit trying to punish ordinary beer sellers. Some prosecutors in some sections of the state did try to stop the sale of the stronger beers and ales, but the juries even refused to declare eight percent beer intoxicating.⁷³ The course of events in Reno County concerning the status of beer occurred in many other Kansas counties. The following affords an insight into the decision made by the Supreme Court and its effect.

⁷²Kansas City Star, 10 March 1935.

⁷³Clugston, pp. 287-289.

On June 17 Fred Owston and Perry Lundry began selling beer in Hutchinson. The state obtained a temporary injunction prohibiting them from keeping or selling intoxicating liquors on June 22. The defendants filed for a temporary injunction against the state, denying that they kept or sold intoxicating liquor on the premises, although admitting that the beverage they sold was a "malt beverage commonly designated as 3.2 beer by a recent act of Congress."⁷⁴ When the state case concluded the defense objected to its evidence. Judge Somers overruled the objection and the defense offered to prove that the beer was non-intoxicating in fact. This offer was rejected by the trial court, and Somers held that beer "being a malt beverage was in violation of the prohibitory law of Kansas, and that it was not competent for defendants to show that it was not intoxicating as a matter of fact."⁷⁵ The defendants were sentenced, fined, and released on bond. Owston and Lundry announced that they would appeal the decision on the grounds that they were not allowed to introduce this evidence.

Immediately after the decision was handed down by the district court, Owston and Lundry reopened their beer stands. They were arrested and found in contempt of court for

⁷⁴Kansas State, Reports of Cases Argued and Determined in the Supreme Court of the State of Kansas, State of Kansas v. Fred Owston, et. al., 138 (8 July 1933 to 9 March 1934), Topeka: Kansas State Printing Plant, 1934), P. 173.
 Hereinafter cited as State of Kansas v. Fred Owston et. al.

⁷⁵State of Kansas v. Fred Owston, et. al., pp. 174-175.

continuing to sell beer after the court had issued an injunction against such sales. Judge Somers sentenced them to jail for 30 days, but allowed them to go free on an appeal. They reopened their stand. Somers then found them guilty of contempt of court, and sent them to jail for six months "right now," refusing to allow them bail on an appeal. Chief Justice Johnston announced later that they would be released on \$1,000 bail when their appeal reached the Supreme Court in early July.⁷⁶

On the July 13, Justice Smith rendered the court's decision. According to Arthur Capper, editor of the Topeka Daily Capital, "nothing is settled that was not already settled by the decision of the Kansas supreme court on 3.2 beer." Beer was neither illegal nor legal, intoxicating or non-intoxicating. The question of fact was left to the district courts of the state. No way was suggested of determining whether 3.2 beer was intoxicating, but the court reversed Judge Somers decision because of his refusal to admit evidence by the defendants to show that the beer was not in fact intoxicating. The court held "that the evidence should have been admitted"⁷⁷ with little amplification, merely observing that the burden of proof was on the defendants. A new trial was ordered for Fred Owston and Perry Lundry. Meanwhile, the two beer sellers reopened their stands.

⁷⁶Topeka Daily Capital, 28 June 1933.

⁷⁷State of Kansas v. Fred Owston, et. al., p. 183.

The court, in making its decision, cited a number of cases and decisions made in Kansas the previous 40 years. It explained the intent of the legislature when it first started to regulate saloons in 1868 and in the prohibitory law of 1881 which was first, the regulation, and, eventually, the prohibition, of traffic in liquor that was intoxicating as a matter of fact."⁷⁸ Since 1890 the statutes had stated that defendants were entitled to submit evidence to prove that the liquor they were charged with selling was not intoxicating."⁷⁹ Until 1933 "beer was presumed to be intoxicating and in the absence of evidence to the contrary, it will always be presumed to be intoxicating liquor."⁸⁰ According to the court, this presumption could be overcome by evidence. The court had for 40 years refused to allow defendants the right to submit evidence to the contrary. It was not until the summer of 1933 that the court ruled that the question of the intoxicating quality of beer was to be determined in the trial court. It was carefully pointed out that court decisions should not be construed to mean that 3.2 beer was legal in Kansas.

The Supreme Court ruling threw Kansas into confusion. Governor Landon described the situation as "intolerable."⁸¹ He predicted that the prohibition enforcement problem would

⁷⁸State of Kansas v. Fred Owston, et. al., p. 183.

⁷⁹State of Kansas v. Fred Owston et. al., pp. 183.

⁸⁰State of Kansas v. Fred Owston, et. al., p. 181.

⁸¹Topeka Daily Capital, 15 July 1933.

come "more muddled," and that some juries would convict in some cases, and others acquit. Max Wyman, Reno County district attorney, summed up the situation best: "It looks to me like Kansas has got 3.2 beer and if the legislature doesn't like it, it can pass a law."⁸² The situation could only be solved by legislative action. Governor Landon hoped that the special session he planned to call later in the fall could enact a more definite statute.

Meanwhile, local law enforcement officers were bemused by the court decision. How juries were to decide if 3.2 beer was intoxicating other than by trying it out personally was not clear. B.W. Smith, Manhattan Justice of the Peace, wrote Governor Landon pleading that he call a special session of the legislature to set the alcoholic content of beer. He claimed "It is no more trouble to get reputable citizens to swear that 3.2 beer is not intoxicating, than it would be to have them swear that 6, would not be."⁸³ A trial court decision in one case or county would not necessarily be binding in other cases. The lack of uniformity meant that every case had to be determined on its merits as to intoxication. Richard B. Stevens, Douglas County attorney, said "if juries acquitted defendants, his office no longer would prosecute beer sellers." He continued, "If there were no convictions it

⁸²Topeka Daily Capital, 15 July 1933.

⁸³B.W. Smith to Alfred M. Landon; 27 July, 1933, Landon Papers.

ould be a loss of money to the county to continue to prosecute."⁸⁴

The Supreme Court decision opened the way to endless litigation. Throughout the remainder of July test cases appeared in police and district courts throughout the state. Several county attorneys indicated that they would drop beer prosecutions if juries in trial courts acquitted. District Attorney Wyman epitomized the dilemma faced by county attorneys when he said "I don't know what we will do for evidence."⁸⁵

In the first test case to be tried in Wichita, Police Judge O.W. Helsel held 3.2 beer to be non-intoxicating and discharged six defendants of liquor possession charges filed against them. Applause greeted the judge's ruling. The police court room was jammed full for the hearing, when two local physicians, Dr. W.A. Pharis and Dr. R.E. Padfield, testified that "3.2 percent beer is not intoxicating and it would be impossible to drink enough of the brew to become mildly intoxicated."⁸⁶ The city presented no evidence to the contrary and the witnesses were not cross-examined.

The situation in Kansas was becoming chaotic. While juries at Salina and Abilene were acquitting defendants charged with sale of 3.2 beer and raiding squads were descending upon Topeka venders of beer, Attorney General Boynton was declaring

⁸⁴Topeka Daily Capital, 15 July 1933.

⁸⁵Topeka Daily Capital, 15 July 1933.

⁸⁶Topeka Daily Capital, 15 July 1933.

at the legislature should define the percentage of alcohol permitted. Leavenworth, Wichita, Arkansas City and Hutchinson city authorities planned to enact ordinances increasing the occupation tax on soft drink dealers.⁸⁷ Scores of Kansas City restaurants, drug stores and buffets openly sold 3.2. One of the dealers, J.E. Pettigrow, posted signs advertising several brands of beer in the window of his restaurant a block from the police station.⁸⁸

The Supreme Court and the actions of Kansans forced Governor Landon to call for the special session to settle the beer question. The confused situation was one that only the lawmakers could untangle. The legislature would have to determine the percentage of alcohol that constituted an intoxicating beverage. Miss Lorraine Elizabeth Wooster, former State Superintendent of Public Instruction, revealed the attitude of drys when she predicted that "state lawmakers would never legalize beer." She threatened that "If they do they never will go back home again."⁸⁹

The special session that was to meet in the fall would consider Governor Landon's economic plans for the state, and determine the fate of the bone dry law. By the end of the summer, the majority of Kansans were ready for legalized beer. J.N. Dolley, key member of the Anti-Prohibition Society, felt that "legalized beer would lessen demand in Kansas for repeal of the Eighteenth Amendment and would reduce hard liquor consumption and would aid in breaking down bootlegging and

⁸⁷Topeka Daily Capital, 20 July 1933.

⁸⁸Topeka Daily Capital, 15 July 1933.

ngsterism."⁹⁰ The main dissatisfaction of Topekans was not the open sale of beer but the cost. Beer was selling for 25¢ for a 12-ounce bottle instead of 15¢ as was customary in wet states.

The summer of 1933 ended with local law officers at a loss what to do with beer sellers. All across the state enforcement of prohibitory laws differed. Even in the same city, county and city officials were in disarray. While the Topeka city police were arresting four persons on charges of selling 3.2 beer, the Shawnee County sheriff, Dean Rogers, was claiming that "no beer was being sold in Shawnee County to his knowledge."⁹¹

⁹⁰Topeka Daily Capital, 11 July 1933.

⁹¹Topeka Daily Capital, 20 July 1933.

1934: The Referendum and a Fight for Traditional Beliefs

The Supreme Court ruling and the easy beer penetration of Kansas was thought by some to be inductive of a more progressive, if not pragmatic, attitude toward liquor that would make repeal possible in 1934. With beer being sold everywhere, untaxed, unregulated, unlegalized, Kansas prohibition became ludicrous, even to many sincere prohibitionists. "Prohibition is no longer a sacred cow in Kansas"⁹² was the assertion in one national magazine article. It also pointed out that "Despite this apparent reversal of attitudes there is no ostentatious enthusiasm for repeal and the general attitude seems to be one of indifference."⁹³ Another author, however, was emphatic that Kansas would "join the wet parade."⁹⁴ He claimed that this was evident "merely by roaming around the state a little while."⁹⁵ He continued, "All you have to do is talk to merchants and clergymen, sheriffs and bankers, legislators and editors. Anybody. Everybody." The complaints with prohibition ranged from ineffectual and expensive enforcement to public hypocrisy and official malfeasance.

⁹²Ernst Dewey, "Kansas Views Repeal," The Commonweal, 17 (22 March 1933), p. 570.

⁹³Dewey, p. 571

⁹⁴Walter Davenport, "The Vanished Desert," Colliers, 2 (December 1933), pp. 10-11.

⁹⁵Davenport, pp. 10-11.

With beer being openly sold and consumed everywhere in Kansas the legislature was finally called into special session. The session that met in late October was faced with two measures. As indicated earlier, Representative Blood proposed to legalize and tax 3.2 beer. His bill failed to pass. Yet the legislature felt that the people should settle the basic issue of prohibition. They decided to submit a proposed amendment in the next general election to strike prohibition from the Kansas constitution. Meanwhile local law officers found it impossible to convict beer sellers on charges of violating the prohibitory laws.

Politically dry and personally wet, Governor Landon favored the referendum but announced that he would vote against repeal. He argued that its presence in the state constitution was the only safeguard against the saloon, and he wanted to vote to retain the amendment until a program has been worked out for better control of the liquor traffic. Landon exemplified the bifurcation of many Kansans on liquor.

The 1934 referendum campaign began late, and the Kansas press reported widespread dry apathy and lack of public excitement on the prohibition issue. Kansans continued to openly sell and consume beer. Juries continued to refuse to find 3.2 beer and that of higher alcoholic content intoxicating. Kansas seemed content to allow the dries to keep their law, as long as they were allowed to keep their beer.

The dry campaign began in September, headed by Homer Rodeheaver, former musical director for evangelist Billy

day. The campaign was to visit approximately 50 cities.

John R. Golden, chairman of the Kansas Prohibition Committee, was confident that the dries would defeat the repeal amendment. He claimed that "every precinct in the state has been organized and has a strong committee of workers."⁹⁶

The major strategy behind the dry campaign was to appeal to the traditional values of Kansas. The dries began to mobilize the youth. Reverend Richard Nance, of the Emergency Prohibition Committee, challenged the youth to do their part. It was announced that "all the young people societies of the Protestant churches are joining in the campaign to keep the state dry."⁹⁷ Thus, the theme of the campaign became "Keep Kansas Dry for Kansas Youth."

As part of the dry theme that prohibition would keep the youth unsullied, the Topeka Daily Capital published the letters of young authors in favor of retaining the prohibitory law. One such "prize winning" letter appeared in the paper on September 24, 1934:

Kansas should retain constitutional prohibition, for to abandon her position now would be to repudiate the ideals she had held thru 50 years of struggle and achievement. Much of the greatness of Kansas had been due to the resourcefulness and thrift of her people. In the stress of world-wide and local disaster it is utter folly to encourage the destruction of those habits which are the human material essential for building recovery.

⁹⁶Topeka Daily Capital, 18 September 1934.

⁹⁷Topeka Daily Capital, 5 September 1934.

The recent wet landslide in Maine leaves Kansas the only one of the pioneer prohibition states still in the ranks. Thousands of dry leaders are looking with desperate hope to Kansas as the only state which can halt the disorderly retreat of temperance and hold things steady until a new strategic attack can be launched. A dry Kansas is, and will continue to be, a steadying influence along the entire temperance front.

Kansas can make no economic gain by repealing state prohibition. She has waited too long to capture a sizeable share of the brewing business. The money which would be spent thru retail channels for alcoholic drinks would go largely to outside manufacturers and would, by an equal amount, decrease the sales of necessary goods and services within the state. The increased cost of supporting our penal and charitable institutions would halt the downward trend of state taxes.

Repeal would create more problems than it could solve. Kansas, by repeal will lose her self-respect. By refusing to repeal she will gain thru the increased welfare of her people.⁹⁸

These letters would appear in the newspaper every week up to the final week of the campaign. The newspaper had concluded that "the wets had the solid backing of the outside liquor interests with an unlimited slush fund in the repeal fight," and they were going to do all in their power to prevent repeal. It declared, "If the amendment carries it will mean the return of the saloon, with all its attendant evils in Kansas."⁹⁹

With Rodeheaver singing against the evils of liquor, youth actively campaigning, and the Topeka newspapers reporting arguments why prohibition should be retained, the dry campaign took on an interesting persona. Rodeheaver was

⁹⁸Topeka Daily Capital, 1 September 1934.

⁹⁹Topeka Daily Capital, 1 September 1934.

reeted with loud applause wherever he went. Dry rallies in the state were drawing thousands. The rally in Topeka on September 17 filled every seat in the city auditorium. When Cadeheaver shouted, "I want to see every morning newspaper on November 6th show such an overwhelming majority for maintenance of [sic] against repeal that the whole world will have to sit up and take notice," the applause which answered him was a storm.¹⁰⁰ Persons who a year ago would have voted for the wet cause were going into the dry ranks.¹⁰¹ By the end of September the drys were predicting victory by a wide majority.

The local newspapers across the state began reporting that "it is apparent to the people of Kansas that they can do a great deal worse than to keep the present system of combating the liquor evil."¹⁰² They claimed that the legislature had proposed no system to control the liquor traffic, that the amendment merely removes the foundation upon which liquor control was based. The Emporia Daily Gazette, as early as October began running a column written by Wells Smith, Chairman of the Lyon County Prohibition Emergency Committee, explaining why citizens should vote no on repeal. The column was printed at intervals until the elections in November. Even more interesting than the column was an article printed in the Emporia Daily Gazette on October 11 entitled "A

¹⁰⁰Topeka Daily Capital, 18 September 1934.

¹⁰¹Topeka Daily Capital, 29 September 1934.

¹⁰²Arkansas City Traveler, 6 October 1934.

bootleg Customer Speaks."¹⁰³ It reported that "a friend who in his day has bought enough bootleg 'likker' to swim a draft horse,"¹⁰⁴ would vote no on repeal. The "bootleg customer" claimed, that "no state that has repeal has shown--Missouri included--that the liquor business can be made responsible."¹⁰⁵

The Kansas City Star printed the results of an opinion poll conducted throughout Kansas. The paper reported that most of the politicians believe the state will vote dry by a safe margin, although a year ago the state was wet by a strong majority."¹⁰⁶ According to the poll, the views of those questioned were somewhat confusing. When asked how the election would go the usual answer was dry. However, many of those same voters said they would vote wet. It is interesting to note that voters in Emporia, Hutchinson, Arkansas City, and Winfield--traditionally dry strongholds were predominantly wet. Farmers surveyed at the state fair were predominantly dry."¹⁰⁷

Near campaign's end, an informed prognosis was that, despite some confused opinion of the referendum, the state would vote dry on November 6 by a safe margin. The editor of the Winfield Courier predicted that Kansas would remain dry

¹⁰³Emporia Daily Gazette, 11 October 1934.

¹⁰⁴Emporia Daily Gazette, 11 October 1934.

¹⁰⁵Emporia Daily Gazette, 11 October 1934.

¹⁰⁶"Kansas Vote Will be Close," Christian Century, 51 (10 October 1934), p. 1294.

¹⁰⁷"Kansas Vote Will Be Close," p. 1294.

if those who are dry in practice and in principle get out and vote dry."¹⁰⁸ Yet it appears from the overwhelming vote against repeal that the drys had some help from the wets. According to W.A. White, "Kansas would stagger to the polls and vote no on repeal," apparently they did.

With the local newspapers predicting that a vote for repeal would mean a return of the saloon, many Kansans went to the polls and voted "no" on repeal. By a margin of 89,000 votes, 56 percent of the votes, Kansas had kept a 54 year old tradition intact. A look at the final vote shows that 89 out of the 105 counties voted to retain the prohibition amendment.¹⁰⁹

The explanation for the vote on the state prohibition amendment is complex. The repeal vote, as can best be ascertained, was fairly straight-forward, but the vote to retain the amendment had some complicated underlying dimensions. With beer being sold openly throughout the state, as a result of the Supreme Court decision in July, many drys seemed prepared to move from bone dry to modified prohibition. To many it appeared that Kansas would keep her amendment and have her beer.

¹⁰⁸Editorial printed in the Topeka Daily Capital, 4 November 1934.

¹⁰⁹Kansas State, Twenty-ninth Biennial Report of the Secretary of State: 1933-34, (Topeka: Kansas State Printing Plant, 1934), pp. 112-113. Hereinafter cited as Twentieth-ninth Biennial Report. The sixteen counties that voted for repeal were: Atchison, Barton, Cherokee, Crawford, Ellis, Ellsworth, Geary, Leavenworth, Rawlins, Russell, Saline, Sedgwick, Shawnee, Trego, Wichita, and Wyandotte.

Throughout the campaign the dry organizations told Kansans that they were not interested in stopping the sale of beer and even if the amendment was retained in the constitution they would make no further efforts to stop the sale of beer. They wanted the prohibitory amendment retained to ensure that hard liquor and the saloon would be kept out of the state.

An examination of the vote on repeal raises a perplexing question. What caused Kansans, who seemed willing only a year earlier to abandon prohibition, to retain the prohibitory amendment? Close examination of the referendum of 1934 indicates that several factors were responsible for the outcome. The following is an examination of those factors.

The Topeka Daily Capital concluded that the dries were better organized and outcampaigned their opposition. This was a cause that they had been fighting for over a half a century. By September the Emergency Prohibition Committee had organized every county for the fight to retain the prohibitory amendment. The committee inundated the voters with massive amounts of literature; and the press in the state was willing to print their views. The prohibitionist staged numerous rallies throughout the state.

On the other hand, the wets lacked the effective organization to present their views. The Anti-Prohibition Committee was not well organized and did not campaign as aggressively as the dries. The Topeka Daily Capital, in the months preceding the election, reported only one meeting of a wet rally. This meeting, according to the newspaper, "was

ended by 200 to 300 people and many of them left during permission."¹¹⁰ By the end of the campaign the lines were nearly drawn. According to George Hammond, State Superintendent of the Anti-Saloon League, "on the side against repeal were school superintendents and teachers, churches and pastors, the governor of Kansas, and practically all the newspapers, and "on the other side was some fruit company (Kansas Fruit and Vegetable Wholesalers) in Wichita and a wet preacher from Missouri."¹¹¹ The drys were predicting victory by wide margins.

The 1934 referendum may have had a different outcome had the wets been as organized as the drys. It is erroneous to simply explain the outcome of repeal on the organization of each side. In Shawnee County, for example, which was organized by the drys into districts and where Rodeheaver filled the Topeka city auditorium with supporters, repeal carried by 1400 votes.¹¹²

Landon, although not a tee-totaler, had sincere qualms about the restoration of the saloon, and, therefore, opposed repeal of the state prohibitory amendment. The prohibitionists were quick to point out that Landon had not abandoned his position as a political prohibitionist. W.G. Clugston, in his book Rascals in Democracy, claimed that Landon workers went among the beer supporters and told them it was to their

¹¹⁰Topeka Daily Capital, 18 October 1934.

¹¹¹Topeka Daily Capital, 5 November 1934.

¹¹²Twenty-ninth Biennial Report, p. 113.

advantage to support Landon because if he were reelected they could still have their beer no matter what happened to the repeal proposal.¹¹³ They said that if he was defeated and repeal was defeated then the beer drinkers might lose their beer but if he was reelected they could still get their beer no matter what happened. Clugston's observation concerning the so-called "Landon Factor" are highly questionable. The claim that Landon was the decisive factor in the referendum is inaccurate. An examination of the gubernatorial election results shows that Omar B. Ketchum, Democratic candidate, carried 9 of the 16 counties that voted for repeal, while Landon carried 7--including Shawnee County where Ketchum was mayor at the time. More importantly Landon also won Kansas City and Wyandotte County where the vote was almost two to one for repeal.¹¹⁴

By 1934, drinking was perhaps acceptable in Kansas but the saloon was not. Many Kansans did not believe that the former could be allowed the latter avoided without the prohibition amendment. The prohibitionists, with the aid of the local newspapers, were effective in getting this idea across. They congenly explained that "until a workable policy of regulation and control could be created Kansas could afford to play a waiting game, whether it was 10 years or 50 years."¹¹⁵ The vote on repeal became an issue of control of

¹¹³Clugston, pp. 287-289.

¹¹⁴Twenty-ninth Biennial Report, pp. 100-101 and pp. 112-113.

¹¹⁵Topeka Daily Capital, 6 September 1934.

the liquor traffic without the saloon or an attempt to regulate the traffic with the saloon. Attorney General Synton explained that repeal of the prohibition amendment would not automatically make Kansas wet. That was a job for the legislature. Senator Arthur Capper reinforced this position in his regular radio weekly talks over WIBW. Capper explained that "the question of whether or not Kansas is to be bone dry is not contained in the vote on the constitutional amendment of November 6th."¹¹⁶ According to Capper, "The Kansas bone dry laws were enacted by the Kansas legislature, in response to public opinion at the time they were enacted." He asserted that, "Any Kansas legislature could repeal or modify the bone dry laws without any change in the present constitution."¹¹⁷ It seemed clear to many Kansans on November 6 that a vote against repeal would allow them to keep their beer without the saloon.

Many Kansans in 1934 believed that "Prohibition at its worst is far better than repeal at its best."¹¹⁸ Drys maintained the prohibitory amendment would keep the saloon out of Kansas. A policeman, who belonged to the vice squad and was

¹¹⁶Topeka Daily Capital, 24 October 1934.

¹¹⁷Topeka Daily Capital, 24 October 1934.

¹¹⁸Topeka Daily Capital, "Prize Winning Letter, Mrs. Blanche Payne, Kinsley, Kansas," 10 October 1934. This type of comment was used by drys throughout the fall campaign.

prohibitionist, best summed up the Kansas attitude in 1934:

If any other plan for prohibition has worked out in any state between now and November's election which will satisfy the drys that liquor can be sold under strict regulation without harmful associates and without the saloon, then the prohibition amendment would be defeated in Kansas, not by the wets but by the votes of people who are tee-totally dry but are discouraged about the operation of prohibitory amendments.¹¹⁹

Kansans voted to retain prohibition in 1934. A flagrant disregard of the prohibitory laws and awaning of prohibition was to follow. Much of the credit for this situation goes to the prohibitionist themselves. They misrepresented the vote. The zealous prohibitionists would cynically claim the election was a mandate to wipe out the liquor traffic, including beer. But moderate drys, like White of Emporia, would begin calling for modification. The next battle was in the legislature over the percent of alcohol in an intoxicating beverage.

¹¹⁹Allen, p. 5.

1935: The Status of Beer

The perplexity of the referendum of 1934 produced three controversial and uncertain years for Kansas. The status of beer was a quandary. In 1935 the beer question would become the most controversial proposal before the legislature. In the struggle to legalize 3.2 beer both the drys and wets would adopt uncompromising positions. The impasse that developed in the 1935 legislature would not be settled until 1937.

The impasse on 3.2 beer is better understood after an examination of the attitudes of Kansas following the referendum.

Before the 1934 referendum many leading drys ruled out the beer issue. Dr. John R. Golden, Chairman of the Emergency Prohibition Committee, took a definite stand to placate the advocates of beer. He said the alcoholic content of beer was a matter to be settled by legislative enactment and, therefore, had no place in the vote on the constitutional amendment.¹²⁰ The issue concerned saloons and "intoxicating" liquors.

The strategy of Golden and the dry forces was hailed as a smart political move, and it was credited as a strong factor in saving the dry amendment. There is no doubt that many Kansans who favored a moderate position on beer voted dry on state prohibition. Yet, following the referendum the drys began campaigning to set the alcoholic content of beer at one-

¹²⁰Kansas City Star, 30 November 1936.

half of one percent, a definition that would bar everything but near beer. George Hammond of the Anti-Saloon League announced that "the public sentiment of Kansas which had been aroused during the campaign was going to be used to drive the brewery business out of the state.¹²¹

William A. White warned that "an arrogant, bigoted attitude" by the victorious drys would result in repeal within a few years.¹²² The moderate drys adopted White's position that a definite limit of 3.2 percent would work to the advantage of all liquor laws in the state. They recalled the "beer revolt" that swept the state soon after the federal government legalized 3.2 beer. Whether 3.2 beer was non-intoxicating was open to argument, but it had been so held by many juries throughout Kansas.

Dry leaders throughout the state denounced White's call for modification. The uncompromising drys took the position that legalization of 3.2 beer would nullify the 89,000 majority against repeal of the prohibitory amendment. Many of them believed that no compromise was possible where any alcoholic beverage was concerned.¹²³ By the time the legislature convened on January 8, 1935, both the drys and wets had adopted uncompromising attitudes.

¹²¹Topeka Daily Capital, 8 November 1934.

¹²²Topeka Daily Capital, 11 November 1934.

¹²³Topeka Daily Capital, 11 November 1934. White's plan for modification was denounced by both state and national dry leaders; the Capital printed his replies on November 14, 16, and 26.

Throughout the 1935 legislative session the shadow of beer hung over both the House and Senate. On January 9, Governor Landon addressed the legislature. He quoted from his message to the special session held in the fall of 1933:

The present statutes dealing with alcoholic content of malt beverage should be clarified. Kansas must face squarely the problem brought about by the ruling of the supreme court on the present law relating to beer. It will be necessary for the legislature to write into the statutes what alcoholic content these beverages may contain to be sold legally or possessed within the state.¹²⁴

Landon believed that the clarification of this issue was one of the most important problems relating to law enforcement that confronted the legislature.

Experienced observers noted that the only thing the legislature could agree on about beer was to disagree. By the end of the session the beer issue had become so confused that the legislature simply adjourned without enacting any law.

Action in the House, where prohibitionist sentiments were strongest and dry constituents were disproportionately represented, was quick and decisive. The Fossey Bill to outlaw beverages containing more than one-half of one percent alcoholic content was the first bill introduced. While the bill was being considered by the State Affairs Committee dry organizations flooded the house with petitions in its behalf.

¹²⁴Kansas Legislature, House of Representatives, House Journal, Proceedings of the House of Representatives, Twenty-ninth Biennial Session, 8 January 1935 (Topeka: Kansas State Printing Plant, 1935), p. 14. Hereinafter cited as House Journal.

The House received petitions with more than 100,000 names.¹²⁵ After the petitions were duly filed the dry representatives settled down to watchful waiting.

On January 21, the State Affairs Committee heard both sides of the beer question. The local newspaper reported that "the audience appeared about evenly divided between drys and wets, but the latter were more vociferous in their applause."¹²⁶ Speakers poured forth reasons why beer should be outlawed and others offered reasons why the Fossey Bill should not be passed.

The Fossey Bill was reported out of committee on January 25 and placed on the calendar for consideration on January 31. Prior to action on the bill wet representatives attempted to compromise on the bill, which had been rewritten to include the sentence: "Alcohol is hereby declared an intoxicating liquor."¹²⁷ Representative O.P. May of Atchison County introduced a local option bill that also excluded alcohol of 3.2 or less percentage of alcohol from provisions of the Fossey Bill.¹²⁸ Several days earlier Representatives McFarland of Shawnee County, Wilson of Crawford County, and Lawless of Wyandotte County introduced a bill to legalize 3.2 beer and

¹²⁵Topeka Daily Capital, 10 March 1935.

¹²⁶Topeka Daily Capital, 22 January 1935.

¹²⁷House Journal, p. 146.

¹²⁸Topeka Daily Capital, 29 January 1935.

regulate its sale.¹²⁹ Both of these proposals were killed in committee.

Debate "snapped and crackled" on January 31 when the House considered the Fossey Bill as the committee of the whole. Attaining all the fervor of a prohibition discussion, the debate was precipitated when beer advocates sought to change the bill to permit sale of 3.2 beverages. Many speakers returned to the Kansas referendum vote. Advocates of one-half of one percent beer argued the vote was a mandate by the people against 3.2 beer; those on the other side contended many voters against repeal favored 3.2 beer and the entire beer question was in no way involved in the election. With drys in complete control, the House voted to outlaw 3.2 beer on February 1.

Approval of the bill by a 78 to 35 vote came only after advocates of 3.2 beer had fought a long but losing battle for its legalization.¹³⁰ Obscured by the lopsided vote was the disaffection of a few self-professed "moderate" drys, who warned that the drastic limitations of the Fossey Bill would lead to "revolt" by many voters who had opposed repeal in 1934, and it would not be conducive to genuine temperance. The moderate position was best described by Representative David C. Dolen of Miami County. The 28 year old minister declared that, "I represent the group that wants to be really temperate," and "this group doesn't want to return to home

¹²⁹Topeka Daily Capital, 25 January 1935.

¹³⁰Topeka Daily Capital, 1 February 1935.

rew and 'spiked' beer."¹³¹ The moderates believed that if the legislature banned 3.2 beer then Kansans would return to hard liquor and the state would be unable to enforce the prohibition laws.

The Fossey Bill provoked pandemonium in the Senate. On February 6 the Federal and State Affairs Committee removed the clause that made it a crime to possess alcoholic liquor and reported it for passage. In a probable attempt to possibly kill the bill the calendar committee placed it at the end of the calendar, where it would not be reached in a long time, if ever, in the regular session. Dry leaders in the House were becoming increasingly dissatisfied with wet treatment of the Fossey Bill. They began threatening retaliation upon Senate bills in the House sponsored by the advocates of the 3.2 bill. The situation was further complicated when Senator C.B. Dodge of Saline County introduced a bill to legalize 3.2 beer subject to a referendum.

In a surprise move on March 1, the calendar committee, of the Fossey Bill, bearing two amendments, and the Dodge Bill advanced consideration by the committee of the whole. Senator Charles Miller of Leavenworth County immediately moved adoption of the committee amendments including one that received the penalty against possession of liquor. His motion carried while friends and foes of the bill recovered from

¹³¹Topeka Daily Capital, 31 January 1935.

their surprise. The Senate then passed the amended Fossey Bill 27 to 12, and returned it to the House for concurrence.¹³²

The Dodge Bill did not move as quickly as the Fossey Bill. It was passed, amended, killed, resurrected, amended and passed; and the process was repeated several time. The action on the Senate floor became so incomprehensible that a local newspaper was prompted to report that "the austere Senate became so mixed up in its own parliamentary law that a Philadelphia lawyer could not have extricated them."¹³³ The Senate finally approved the Dodge Bill on March 4, 1935.

Neither the amended Fossey Bill or the Dodge Bill were acceptable to the House. Dry leaders in the House said that they would vote against the Senate amendments. They did not propose to loosen up any provisions of the bone dry law.¹³⁴ A conference committee was appointed.

Three conference committees failed to settle the difference between the House and Senate. The third committee failed even to submit a report. It reached an impasse and just quit. From the dry standpoint, "it would be better not to have any legislation pertaining to beer than to allow the Senate amendments to become law."¹³⁵

Kansans continued to sell and drink 3.2 beer with impunity as its legal status went undefined. All efforts to

¹³²Topeka Daily Capital, 5 March 1935.

¹³³Topeka Daily Capital, 5 March 1935.

¹³⁴Topeka Daily Capital, 5 March 1935.

¹³⁵Kansas City Star, 10 March 1935.

place a tax on the beverage met bitter and successful opposition from the dry forces. Even measures to regulate the beer joints, which both drys and wets deplored as a menace to law and order, were killed by mutual consent."¹³⁶

Representative Fossey blamed Governor Landon for the failure of his bill. He claimed, "if the governor had used his influence on the bill, the conference committees would have reached an agreement on amendments inserted by the Senate."¹³⁷ In response, Landon issued a short statement that he was not responsible for every bill killed by the legislature, and pointed out that more than 300 had been killed in this session.¹³⁸ The Governor was hardly to blame when the gulf between the opposing sides prevented cooperation even on issues where they shared common ground.

The beer question was the most controversial proposal before the legislature in 1935. Both the wet and dry forces actively pursued their positions without consideration of compromise. Both wet and dry forces agreed that they would present programs to regulate and tax beer at the special session that would convene July 7, 1936.¹³⁹

The failure of the 1935 legislature to settle the beer question probably made Kansas wetter and definitely lessened

¹³⁶Topeka Daily Capital, 6 March 1935.

¹³⁷Topeka Daily Capital, 6 March 1935.

¹³⁸Topeka Daily Capital, 6 March 1935.

¹³⁹Kansas City Star, 10 March 1935.

the ability of officials to regulate the traffic.¹⁴⁰ Juries were unwilling to declare any kind of beer as intoxicating, even when it contained as high as 15 percent alcohol.

Between 1935 and 1937 the task of enforcing the dry law became intolerable. Only five months after the legislature failed to reach a compromise on the beer question it was reported that Kansas had "400 wholesale and 5,662 beer dealers."¹⁴¹ Beer flowed openly and without regulation. This was obviously anathema to drys, who had staunchly resisted all attempts to legalize and regulate 3.2 beer.

The situation had become confused. County attorneys throughout the state balked at prosecution of cases involving beer. They found it "next to impossible"¹⁴² to get convictions. Many of them contacted Attorney General Clarence Beck to explain their reluctance and seek his advice. Beck, who as a county attorney "welcomed a test case,"¹⁴³ no longer felt that juries would convict. County Attorney James P. Coleman of Geary County expressed the attitude of many of his colleagues that they were wasting their time. He informed Beck that "it is hard enough to get convictions in this county on the sale and possession of hard liquor" "I know of no

¹⁴⁰The legislative session and the beer question was covered extensively by the Topeka Daily Capital in January, February, and March of 1935.

¹⁴¹Abilene Reporter, 9 August 1935.

¹⁴²James P. Coleman to Clarence Beck, 25 October 1935, Attorney General Opinions: Box 21 (Kansas State Historical Society, Topeka). Hereinafter cited as Attorney General Opinions.

¹⁴³Topeka Daily Capital, 15 July 1933.

evidence here that we can get that 3.2 or 3.98 beer is intoxicating,"¹⁴⁴ he concluded, Doctors and chemists all testified that beer was non-intoxicating. Dr. C.W. Huehlberger, head of the crime detection laboratories of Northwestern University, told county attorneys that "it is virtually impossible to get drunk on 3.2 beer if taken in moderate quantities."¹⁴⁵

Confusion on beer ranged from advertising to regulation. National breweries contacted Beck about the legality of providing beer dealers with signs advertising 3.2 beer. Beck could find "no fault with a brewer furnishing signs or fixtures for the sale of such product" until there was a conviction declaring 3.2 beer intoxicating. In a reply to an inquiry regarding the authority of the Plevna City Council to enact an ordinance prohibiting the sale of beer, he advised them "to consult a competent local attorney."¹⁴⁶

Thus was the situation in Kansas. With the status of beer undefined, Kansans were able to enjoy their beer--of any alcoholic content--without fear of conviction. Signs indicated that perhaps the drys and wets had become more thoughtful and reasonable as the 1937 legislature prepared to meet.

¹⁴⁴James P. Coleman to Clarence Beck, 25 October 1935, Attorney General Opinions.

¹⁴⁵Topeka Daily Capital, 30 January 1937.

¹⁴⁶Reverend C.C. Green to Clarence Beck, 19 October 1935, Attorney General Opinions.

1937: The Beer Question Settled

The 1937 legislation to legalize 3.2 was the first legal retraction of prohibition since 1880, and therefore pivotal in the waning of prohibition. An accurate reflection of the dry attitude toward legalization of 3.2 beer was best expressed by Senator Charles Richard of Nemaha County who charged that "it will be the beginning of the end of the dry law in Kansas."¹⁴⁷ The wets argued that the excess of the "unregulated" beer joints were far more disruptive to the public welfare than "regulated" joints.

Events during the interim convinced many legislators that a decision was urgent. The undefined status of beer was recognized unsatisfactory from every point of view.¹⁴⁸ In 1937 the dry and wet legislators would agree to legalize beer, and they would also enact some of the most stringent regulatory beer laws in the nation.

1937 marked a turning point in the attitudes of Kansans toward its bone dry law. Legal beer symbolized a new and liberal attitude toward prohibition. According to William A. White, "Times are changing and men change with them."¹⁴⁹ His belief was that the conditions of 1880 no longer existed. The reasonable explanation he offered for this attitude was that

¹⁴⁷Topeka Daily Capital, 12 March 1937.

¹⁴⁸Kansas City Star, 30 November 1936.

¹⁴⁹Kansas City Star, 30 November 1936.

this generation does not have the same revulsion toward the bootlegger that the preceding generations enjoyed fostering toward the joint keeper and his father who sold rum openly in the ancient saloon."¹⁵⁰ In his opinion, "the majority of Kansans were for real restrictions on the unregulated liquor traffic."

The history of the Plummer-Schrepel Bill deserves examination. The political maneuvering of the legislature clearly demonstrates the guile that both drys and wets used to promote their interests.

Conditions seemed favorable for realistic beer legislation when the 1937 legislature convened. Governor Walter A. Huxman, described the present condition with regard to the prohibitory amendment as "intolerable in an address to the Kansas legislature."¹⁵¹ He instructed the legislators to adopt a definition that was "reasonable."¹⁵² Yet, Huxman was politically keen not to define his preference. He simply advised them to "move the definition as far as to one side as reason will permit, or as far to the other side as reason will permit."¹⁵³

As usual the extreme dry and wet forces began campaigning for their position. The dry organizations, under the leadership of Golden, adopted a resolution to be presented to

¹⁵⁰White, p. 50.

¹⁵¹Topeka Daily Capital, 14 January 1935.

¹⁵²Topeka Daily Capital, 14 January 1935.

¹⁵³Topeka Daily Capital, 14 January 1935.

the legislature declaring that "more than one-half of one percent alcohol is intoxicating."¹⁵⁴ H.J. Tholen, President of the Anti-Prohibition Society, accused the drys of "resorting to their usual tactics,"¹⁵⁵ and announced that "a majority of Kansas legislators will not favor a bill to limit alcoholic content of beer to one-half of one percent."¹⁵⁶

Despite Huxman's plea that the legislature settle the beer question reasonably, action in the House and Senate was slow. The first sign of action occurred on January 27. Representatives George W. Plummer of Jefferson County and Chris F. Schrepel of Pratt County introduced a bill in the House that simply stated that "all liquor containing more than one-half of one percent of alcohol by volume shall be construed and held to be intoxicating."¹⁵⁷ It was immediately referred to the State Affairs Committee, and action was postponed.

Meanwhile debate in the Senate was livid. Senator Donald Allen of Jefferson County moved that the penalty on persons convicted of possession of liquor for their personal use be less than for those who kept illegal beverages for sale. Debate became facetious. Senate Cecil Calvert of Ellis County immediately moved to amend the measure to define any alcoholic liquid which contained alcohol, ether, ammonia, "or any other

¹⁵⁴Topeka Daily Capital, 14 January 1935.

¹⁵⁵Topeka Daily Capital, 14 January 1937.

¹⁵⁶Topeka Daily Capital, 9 January 1937.

¹⁵⁷Topeka Daily Capital, 28 January 1937.

intoxicating ingredient," as illegal and subject to the penalties of law.¹⁵⁸ His amendment would have outlawed sale of any alcoholic beverage, even pale beer of one-half of one percent. The Senate rejected the amendment without a record vote.¹⁵⁹ Then Senator E.H. Benson of Thomas County, "with a twinkle in his eye,"¹⁶⁰ stood and offered his approval and support for the original measure. But he wanted to make certain about how much liquor could be possessed for personal use. A gallon was the amount that he thought about right, which caused a "ripple of applause from some, but consternation to those who actually supported the bill."¹⁶¹ By this time the sponsors of the amendment lost interest and voted to kill it.

The legislature went five weeks without any significant action on beer legislation. Several bills were introduced in both the House and Senate, but they were quickly buried. The legislature apparently was not too eager to discuss the controversial issue. Meanwhile, both the House and Senate were flooded with petitions demanding that they take some action to define a legal percentage.¹⁶²

The Plummer-Schrepel proposal reached the House floor on February 9. In a spirited debate, advocates of the proposal

¹⁵⁸Topeka Daily Capital, 14 January 1937.

¹⁵⁹Topeka Daily Capital, 14 January 1937.

¹⁶⁰Topeka Daily Capital, 14 January 1937.

¹⁶¹Topeka Daily Capital, 14 January 1937.

¹⁶²House Journal: 1937, pp. 1153-1173. These pages contain a list of petitions presented before February 9, 1937.

ought stubbornly and successfully to prevent the 3.2 forces from altering it in any respect. In the two days that the proposal was under fire, several amendments were offered and soundly defeated, and the bill was approved 84 to 37. Advocates of 3.2 beer condemned the House action. Morris Johnson of Saline County exclaimed, "Passing this law won't affect the enforcement of the prohibitory law one particle."¹⁶³ Wittington Reed of Wyandotte County added, "No matter how much we legislate, you can't make a drinker dry."¹⁶⁴ House dries were immune to the plea by Governor Huxman for a reasonable definition.

The House action produced consternation among several of the wet counties. Voters in Cherokee County petitioned the legislature to either give them 3.2 beer or allow them to secede and join Missouri.¹⁶⁵ Petitioners from Ellsworth, Russell, Barton, Ellis, and Trego counties warned the Senate not to accept the ultra-dry bill passed by the House.¹⁶⁶ The effect of the petitions on the legislature is merely conjecture; but action in the Senate seemed to indicate that an impasse similar to that of 1935 was evolving.

It was becoming apparent that the Senate would not accept the Plummer-Schrepel Bill without modification. The wets quickly tucked the bill away in committee and delayed any

¹⁶³Topeka Daily Capital, 10 February 1937.

¹⁶⁴Topeka Daily Capital, 10 February 1937.

¹⁶⁵Topeka Daily Capital, 11 February 1937.

¹⁶⁶Topeka Daily Capital, 16 February 1937.

action on the bill for a month. As the end of the session approached it seemed likely that the beer question would go unsettled.

The failure of the Senate to act prompted Governor Huxman to demand that the legislature clarify the prohibitory situation. In a radio address on WIBW, he emphatically insisted that something be done. He reiterated his belief that "it is inconceivable that the people of Kansas are going to continue to permit the open and flagrant violation of the prohibitory amendment to the constitution."¹⁶⁷ He asked the legislators to secure a "practical solution to this question"¹⁶⁸ and be guided by reason and facts," not by our own individual prejudices, not matter at which extreme we may find ourselves."¹⁶⁹

After the Governor's address, the Federal and State Affairs Committee immediately voted to amend the bill to define the legal alcoholic content at 3.2 percent by weight. Senate Claude C. Bradney, President protem announced that the amended bill would be placed on the calendar where it would receive attention in time for the House to accept or decline it.¹⁷⁰

¹⁶⁷Topeka Daily Capital, 8 March 1937.

¹⁶⁸Topeka Daily Capital, 8 March 1937.

¹⁶⁹Topeka Daily Capital, 8 March 1937.

¹⁷⁰Topeka Daily Capital, 11 March 1937.

The senate required one hour to pass the amended Plummer-Schrepel Bill. The vote was 24 to 16.¹⁷¹ Debate was limited, with many of the familiar arguments presented. The amended bill was then sent back to the House for action. Representatives quickly decided by a standing vote of 48 to 38 not to concur in the Senate amendment. The fate of beer was placed in the hands of a conference committee.

The history of Plummer-Schrepel Bill seemed similar to that of the earlier Fossey Bill. The first conference committee was unable to agree and a new committee was appointed. On March 16, the second conference committee issued both houses an ultimatum; "either pass a regulatory measure, or no report will be made."¹⁷² This forced the legislature to either enact the amended bill or end the session without beer legislation. The latter was intolerable to both sides.

There was a noticeable absence of controversy over the feasibility and desirability of regulating the beer joints. Neither the ardent dries nor the vociferous wets wrangled about a rigid law. It had been pre-determined to clamp down on the "saloons."¹⁷³ On March 24 the legislature passed a bill to regulate and tax the sales of cereal malt beverages. The bill was merely regulatory and did not define the legal alcoholic content.

¹⁷¹Topeka Daily Capital, 11 March 1937.

¹⁷²Topeka Daily Capital, 17 March 1937.

¹⁷³Topeka Daily Capital, 17 March 1937.

As predicted the second conference committee reported the amendment for passage. Short and to the point, the report said: "The house accedes to the senate amendment."¹⁷⁴ After fierce debate between Representative Plummer, co-author of the original bill, and Representative Donald Muir of Harper County, member of the conference committee, the House voted 75 to 36 to legalize 3.2 beer.¹⁷⁵

By 1937 moderate drys were willing to permit the sale of 3.2 beer. This was the first time since 1880 that any legislature had passed a law that did not prohibit the sale of liquor.¹⁷⁶ According to Attorney General Beck, "the nice thing about the beer bill passed by the legislature is that it has plenty of teeth in it--enough to satisfy the drys and still allow the wets their 3.2 alcoholic content in malt beverages."¹⁷⁷ Under the new law:

Almost anyone with a stainless life behind him and the endorsement of his pastor and two or three members of the Anti-Saloon League and who promises not to pull down the blinds and to close early every night and will open with prayer in the morning, can get a license to run a beer parlor in Kansas.¹⁷⁸

The three controversial and uncertain years that followed the 1934 referendum became pivotal in the history of prohibition. The attitudes of Kansans toward prohibition were

¹⁷⁴Topeka Daily Capital, 26 March 1937.

¹⁷⁵"Unwilling Fathers," Time, 29 (5 April 1937), p. 15.

¹⁷⁶Zornow, p. 256.

¹⁷⁷Topeka Journal, 1 April 1937.

¹⁷⁸Zornow, p. 256.

changing. For the first time in 57 years the legislature enacted a law that allowed for the sale of an alcoholic beverage. In 1937 the dry and wet forces were able to reach a compromise concerning the status of beer. The hypocritical situation where beer was simply not recognized or presumed to be non-intoxicating was settled. The dries obtained some of the most stringent laws in the nation to regulate the sale of beer, and the wets were allowed to enjoy 3.2 beer legally. But, according to a national magazine, "it is going to take more than a law to tear Kansans from 'Deep Shaft,' and other easily procured standard brands."¹⁷⁹

¹⁷⁹"Kansas Dry?: 3.2 Beer Okay. Drink All You Want Without Stopping," Literary Digest, 123 (10 April 1937), p. 123.

1938-1945: Years of Uncertainty

With the beer controversy settled, except for legal interpretation of the statutes, attention focused on liquor. Conditions in Kansas, following the enactment of the new beer law, became reprehensible. Kansans were satisfied with the liquor status quo for the remainder of the 1930s and 1940s. This meant persistent, often flagrant, and usually immune violation of the prohibition laws.¹⁸⁰ Bootleggers engaged in their illegal trade largely with impunity. It was estimated that 200,000 gallons of whiskey flowed into "dry" Kansas annually.¹⁸¹ A national magazine proclaimed that "Kansas developed into a bootleggers' paradise," and "liquor was easier to buy in Kansas than in most wet states."¹⁸² Law enforcement officials were unwilling or unable to make Kansas dry." By 1945 it was becoming apparent that many Kansans were willing to accept violation of the law "as a natural condition."¹⁸³

Examination of this hypocritical situation is necessary to understand the campaign of 1946 and referendum of 1948.

Many moderate drys believed that the legalization of beer would reduce the consumption of hard liquor. But once Kansans

¹⁸⁰Patrick G. O'Brien, "Bootlegging Culture of Southeast Kansas," unpublished manuscript.

¹⁸¹Kansas City Star, 1 July 1939.

¹⁸²Woodbury, p. 115.

¹⁸³Kansas City Times, 13 November 1945.

and beer, they expected liquor. They were not disappointed. A national magazine proclaimed that with the unrestrained liquor traffic in the state it was "easier to buy good liquor in Kansas than in adjacent states."¹⁸⁴ Liquor began flowing into Kansas from Missouri, Nebraska, Louisiana, Colorado, and Illinois. On April 29, 1937, Clarence Beck, Attorney General, met with federal officials of the Alcohol Tax Unit to discuss the possibility of assistance in preventing shipments of intoxicating liquor into the state. He thought "a dry state should be entitled to the protection of the federal government under the Twenty-first Amendment, and the Liquor Enforcement Act of 1936."¹⁸⁵ The Attorney General was informed that unless the state absolutely prohibits the importation of all intoxicating liquors, or permits importation under a permit system where exemptions are granted the liquor enforcement act does not apply."¹⁸⁶ Until 1939, state authorities received little help from the federal government in their attempts to stop the flow of hard liquor across the state line.

Congress with the aid of Senator Arthur Capper, enacted legislation in 1938 to provide some protection to dry states.¹⁸⁷ Under this legislation, it was a misdemeanor to

¹⁸⁴Literary Digest, p. 123.

¹⁸⁵Clarence Beck to Stewart Berkshire, 29 April 1937, Attorney General Opinions.

¹⁸⁶Clarence Beck to Sam H. Lattimore, 2 March 1938, Attorney General Opinions.

¹⁸⁷Clarence Beck to Arthur Capper, 21 May 1938, Attorney General Opinions.

transport intoxicating liquor from a wet state into a dry state. The ATU could seize the automobile used to transport the liquor, and prosecute for a fine of not more than \$500 and a sentence of not more than a year.¹⁸⁸ In a great flurry of activity, the 1939 legislature amended the prohibitory laws to comply with the new federal legislation.¹⁸⁹ Kansas would be the only dry state to enlist the aid of the Alcohol Tax Unit.¹⁹⁰

The ATU, with the assistance of the Kansas Bureau of Investigation, was able to make several arrests for transporting intoxicating liquor into the state. One case involved several truckloads of Kansas-bound liquor that originated in Peoria, Illinois. Federal agents patiently followed the liquor caravan through Wisconsin and Minnesota, to South Dakota, across Nebraska, and finally into Kansas, where the startled drivers were arrested as they crossed the state line.¹⁹¹ According to Lester Luther, Assistant District Attorney, they were able "to catch two or three operators a week, but that was only a drop in the bucket." He explained, with some 1,200 miles of border to patrol, it would take at least 1,200 men to enable them to really control the

¹⁸⁸Topeka Daily Capital, 11 November 1945.

¹⁸⁹House and Senate Journal: 1939, p. 254.

¹⁹⁰Indications show that Mississippi and Oklahoma received little assistance.

¹⁹¹Collie Small, "Kansas Staggers to the Polls," Millers, 102 (28 August 1938), p. 68.

situation."¹⁹² By 1945, as events will show, Kansas was receiving more assistance than they had bargained for.¹⁹³

The ATU cooperated with state and local officials by providing them with lists of all persons holding liquor stamps in the state. According to a report sent in 1945 to Attorney General A.B. Mitchell, there were 443 federal liquor stamp holders in the state. Leavenworth County had the largest number with 77. In some other counties, the number reached as high as 64 but 36 counties, most of them in the western half of the state, had no citizens holding the federal stamps.¹⁹⁴ Possession of a liquor stamp served as a tip on possible bootlegging operations in the state and the Attorney General's office notified those counties. Yet possession of a stamp was not sufficient evidence to sustain a conviction¹⁹⁵ and county attorneys were reluctant to prosecute without further proof.

Law enforcement following the enactment of the beer law in 1937 began to resemble the old Volstead days. According to a report made by Lou Richter, director of the KBI, Wichita was a "wide-open" city. The report alleged that the unlawful situation that existed was "controlled and protected" by a

¹⁹²Topeka Daily Capital, 11 November 1945.

¹⁹³Kansas City Times, 13 November 1945.

¹⁹⁴Retail Liquor Dealers State of Kansas to A.B. Mitchell, July 1945, Attorney General Opinions.

¹⁹⁵A.B. Mitchell to Mrs. Frank U. Russell, 7 May 1943, Attorney General Opinions.

indicate" that included local and state officials.¹⁹⁶
 mination of the Attorney General Opinions indicated that by
 45 many other Kansas cities and towns were also "wide-open."

The general attitude of many Kansans was that "most of
 the enforcement officers were not doing their duty and were
 constantly violating their oath of office."¹⁹⁷ Much of this
 attitude was well-founded. On December 8, 1940, Charles D.
 Knaught, Topeka Chief of Police, was ousted from office for
 failure to enforce the prohibitory laws.¹⁹⁸ His removal was
 the climax of a sensational inquiry by the KBI into the city
 protecting pay off" rackets. Yet officials that did try
 enforcing the laws found it difficult to get re-elected in a
 county that did not want enforcement. Many county attorneys
 found it nearly impossible to enforce a law that the people
 did not want enforced.¹⁹⁹

Many bootleggers were able to escape the legal system.
 juries were often reluctant to convict defendants. The
 proof of possession of intoxicating liquor was difficult to
 establish. Bootleggers went to great pains to disassociate
 themselves from the actual whiskey. Many of them subsidized
 otherwise innocent families and left their whiskey with them
 and in return they paid the family's rent. It was reported

¹⁹⁶Kansas Bureau of Investigation Report, July 1945,
Attorney General Opinions.

¹⁹⁷G.L. Biles to A.B. Mitchell, 17 December 1945,
Attorney General Opinions.

¹⁹⁸Topeka Daily Capital, 8 December 1940.

¹⁹⁹Topeka Daily Capital, 8 December 1940.

that one Topeka bootlegger lowered his liquor down stovepipes
 sunk into a plot of ground next door. When the police
 uncovered the cache they were unable to prove that it belonged
 to him.²⁰⁰ According to Attorney General A.B. Mitchell,
 "defendants were often acquitted even when sufficient evidence
 was produced."²⁰¹ Yet even the lenient state courts could and
 did apply stiff sentences and fines in cases involving
 repeaters.²⁰² In a rare Topeka case, one man was put away for
 30 years as a persistent violator.²⁰³

The violence that accompanies the illegal traffic of
 liquor did not elude Kansas. On the night of December 1,
 1940, Virgil Ott was murdered on the doorsteps of Oasis Acres,
 a "bottle joint" just outside the Wichita city limits. Ott
 was a local gangster with a long record of arrests and
 convictions.²⁰⁴ The owner, Elza Turley, described what
 happened to police: "Otto, with three companions, had
 descended on the 'joint' earlier that night and attempted to
 hijack his secluded store of liquor," and "during the ensuing
 battle, he had been caught in the crossfire and slain by his

²⁰⁰Small, p. 69.

²⁰¹A.B. Mitchell to Jesse I. Liner, 4 January 1945,
Attorney General Opinions.

²⁰²Karl V. Shawver to A.B. Mitchell, 23 February 1945,
Attorney General Opinions.

²⁰³Small, p.68.

²⁰⁴Topeka Daily Capital, 2 December 1940. See also
 Edward Robinson, "The Failure of Local Prohibition," The
American Mercury, 147 (August 1943), p. 179.

own mob."²⁰⁵ Other incidents of violence between bootleggers were reported in state newspapers. But violence between bootleggers and law officers and prohibition agents was almost unknown.²⁰⁶

This "complete breakdown of law enforcement"²⁰⁷ caused the dry forces in Kansas to unite in an effort to "dry" up Kansas. The WCTU, Anti-Saloon League, and churches organized the United Dry Forces to educate every county about the evils of the liquor traffic.²⁰⁸ Dr. R.E. Farley, State Superintendent of the United Dry Forces, began attacking the state and federal government failure to enforce the prohibitory laws. The attorney general's office was flooded with letters requesting that something be done to "clean up" the situation.

On November 9, 1945 federal agents seized 955 cases of liquor having a retail value of approximately \$100,000.²⁰⁹ Many Kansans knew that this was an insignificant amount of the illegal traffic. By 1945 it had become apparent that the attitudes toward prohibition had changed. William A. White explained that a generation had grown into adulthood in the state without personal recollections of the unsavory saloon or

²⁰⁵Topeka Daily Capital, 2 December 1940.

²⁰⁶Patrick O'Brien, "...Staggering To The Polls....," (Lyon County Historical Museum, Emporia, Kansas), 17 February 1985.

²⁰⁷Kansas City Times, 2 February 1939.

²⁰⁸Topeka Daily Capital, 4 February 1939.

²⁰⁹Topeka Daily Capital, 10 November 1945.

the debilitating social affect of alcohol.²¹⁰ Violations of the law were increasing and there was a greater tendency on the part of officials to overlook these violations. Also, there was no apparent demand on the part of the general public for enforcement of the law. Prohibition seemed to make liquor consumption more popular. The abundant supply of illegal liquor brought into Kansas satisfied this growing demand. Moreover, it is evident that the supplying of liquor was highly organized. The consumption and selling of liquor had little social stigma attached to it after beer had been made legal. This changing attitude and the federal raid set off a chain reaction which resulted in the resubmission and repeal of the prohibitory amendment.

²¹⁰O'Brien, p. 4.

1945-1948: The Turning Point-Resubmission

Federal raids on November 9, 1945 forced Kansans to examine the prohibitory law. The raids were on only seven communities.²¹¹ Undoubtedly additional raids could have been made in other cities with equal if not greater success. Federal officials had no difficulty in learning where liquor was kept and in confiscating it. These "sample" raids indicated that there was widespread and flagrant violation of the prohibitory laws and that state and local officials were unwilling or unable to enforce them. It was apparent that Kansas attitudes toward prohibition had changed. According to Randolph Carpenter, District Attorney, Kansas was faced with "either supporting the enforcement of the laws or amending the constitution and repealing them."²¹² The next three years were critical in the history of prohibition. Examination of the attitudes and events in Kansas following the federal raids is necessary to understand the fate of the prohibition amendment in 1948.

Violations of the prohibitory laws had been largely ignored by state and local officials, but the federal raids made that impossible. Governor Andrew F. Schoeppel immediately declared that he would launch an investigation into the

²¹¹The seven communities raided were: Wichita, Topeka, Leavenworth, Lucas, Dorrance, Russell, and Victoria.

²¹²Kansas City Times, 13 November 1945.

atter.²¹³ At the same time, he accused federal authorities of allowing hundreds of thousands of dollars of liquor to enter Kansas. He claimed that they issued liquor stamps to individuals in dry Kansas, and that many of those individuals thought they could operate in Kansas and did.²¹⁴ Attorney General A.B. Mitchell, thereupon sent the names of individuals holding liquor stamps to county attorneys in their jurisdiction. He advised them that holding a stamp should be taken as a "presumption" that the holder was engaged in liquor traffic, and that they should make appropriate investigations and take the appropriate action.²¹⁵

Democrats in Kansas demanded that a special legislative session be held to consider resubmission. They claimed that the breakdown of law enforcement was evidence that the prohibitory amendment was "unpopular and should be abandoned."²¹⁶ Republican Governor Schoeppel, ignored Democratic pleas to call a special session, and instead asked the Legislative Council to research and assemble information on the subject for the 1947 legislature.

An understanding of the waning of prohibition would not be possible without an examination of the gubernatorial election of 1946. Described by one political observer as "one

²¹³David C. Boifs, "Andrew F. Schoeppel, Governor of Kansas 1943-1947," Master Thesis, Kansas State University, 1967, p. 35.

²¹⁴Topeka Daily Capital, 11 November 1945.

²¹⁵Topeka Daily Capital, 24 November 1945.

²¹⁶Topeka Daily Capital, 20 February 1946.

of the weirdest" in Kansas history, the election was conclusive. In the 1947 legislator's decision to resubmit the prohibitory amendment to a vote of the people.

Sides developed early in the liquor battle. Henry Woodring, Democratic leader and ex-governor, blasted prohibition in a February speech, and the Democrats began to form a wet platform plank.²¹⁷ By June, Woodring asserted Kansas was "dripping wet" and he called for repeal of prohibition to end a "hypocritical condition."²¹⁸ His outspoken stand won him the gubernatorial nomination in the August primary election.²¹⁹

Meanwhile, leaders of the United Dry Forces met in Topeka on March 14 to lay plans to combat the rising tide of repeal sentiments. They protested against pressure from "out-of-state liquor interests" and proclaimed that "the people of Kansas will meet this issue if and when their own initiative dictates."²²⁰

The 1946 campaign officially began on September 1, when both party councils adopted their platforms. The Republicans, who were divided on the resubmission question, nominated the personally dry Frank Carlson of Concordia. Unable to disregard the voters' growing disgust with the prohibitory

²¹⁷Topeka Daily Capital, 24 February 1946.

²¹⁸Topeka Daily Capital, 11 June 1946

²¹⁹Robert W. Richmond, Kansas: A Land of Contrast, (St. Charles: Forum Press,) p. 264.

²²⁰Topeka Daily Capital, 14 March 1946.

law, they finally agreed to allow the voters to decide the issue in the next general election. Republican reluctance to take a definite stand on repeal can be traced to their respect for Senator Arthur Capper, a veteran dry leader, who did not want repeal made a campaign issue.²²¹ Yet according to the Topeka Daily Capital, their position not to take a definite stand was the product of the thinking of many men and women, no one individual dictated it and it represented the majority opinion.

Meanwhile, the Democrats, echoing the wishes of Woodring, unanimously adopted a wet plank.²²² The platform plank specifically called for repeal of prohibition, regulation of liquor sales, local option for counties, and a promise of strict law enforcement. According to the Topeka Daily Capital, the delegates simply approved Woodring's personal views. Those that disagreed either resigned or stayed away.²²³

In "one of the weirdest" campaigns; Woodring kept his name before the public more consistently than Carlson, but in doing so angered a lot of people, especially strong prohibition church groups. The Goodland News Republic reported that Woodring was accusing everyone who differed with him on the "booze issue" of being a hypocrite, liar and something worse than a fool. Democrat and former Woodring supporters turned

²²¹"Hotfoot," Time, 48 (September 1946), p. 26.

²²²Topeka Daily Capital, 2 September 1946.

²²³Topeka Daily Capital, 2 September 1946.

to Carlson and the Republican ticket.²²⁴ Yet his vigorous bid for votes on the issue stirred Republicans in many counties out of their complacency.

According to many local newspapers the Woodring campaign reached its peak by October. The Parsons Sun concluded that "if the Republican candidate for governor is guilty of not saying enough, as some believe, the Democratic candidate is guilty of saying too much of which a lot is simply not so."²²⁵ The Woodring campaign lost steam as it progressed.

Meanwhile, Carlson conducted a quieter campaign that stressed that Kansas needed to return to constructive local programs with World War II over.²²⁶ He simply stated that he would try to get the legislature to submit the question of repeal to the people. Near the end of the campaign, an informed prognosis was that, despite Woodring's outspokenness, the Republicans could expect a clean sweep of state offices and congressional seats.²²⁷

Liquor and resubmission became the largest question during the 1946 gubernatorial election. The election attracted national press attention. One national magazine printed photographs of Topeka "liquor vendors" operating right under

²²⁴Fort Scott Tribune, 2 September 1946.

²²⁵Parsons Sun, 3 October 1946.

²²⁶Richmond, p. 264.

²²⁷Topeka Daily Capital, 3 November 1946.

the window of the mayor's committee room.²²⁸ It was believed that whoever was elected governor would remain dry.²²⁹

Carlson, who had served two terms in the Kansas legislature and six in the United States Congress, was overwhelmingly elected. As predicted, the Republicans also made a clean sweep of state offices and congressional seats. Woodring, conceding his defeat, stated "If all the people who had whiskey in their closets had voted for me, I would have won by 4,000 votes."²³⁰ Despite the outcome of the election it was apparent that many Kansas voters, regardless of personal drinking habits, wished to be allowed the opportunity to vote on the prohibitory amendment. During the campaign, Carlson assured Kansans that he would recommend to the legislature that they resubmit the prohibitionary amendment to a vote by the people. The final decision would rest with the 1947 legislature.

Governor Carlson, consistent with his campaign promise, asked the legislature on January 15, to submit the liquor question to direct vote of the people. In his message to the legislature he exclaimed that "we have the obligation to submit this question to a popular vote."²³¹ He urged their

²²⁸"Wets Fight Drys in Kansas Election," Life, 21 (28 October 1946), p. 32.

²²⁹"Wets Fight Drys in Kansas Election," p. 32.

²³⁰"March of the Drys," Newsweek, 32 (30 August, 1948), p. 1.

²³¹Senate and House Journal: 1947, p. 8.

"immediate attention toward providing for the referendum."²³² With his request, he announced that he would guarantee strict enforcement of the law. If it was repealed he would ask the legislature to pass bills to insure the "regulation and protection"²³³ to which Kansans were entitled. The legislature surprisingly acted quickly and decisively.

Predominantly rural and traditionally more dry than the Senate, the House was expected to furnish the resubmission fireworks. Many Republican representatives were obligated to support submission to keep faith with what was expressed in the campaign; but others had been elected only after they had pledged to work against resubmission. It was expected that resubmission would easily gain the necessary two-thirds vote for a referendum in the Senate.

The resubmission battle began in the House on January 20. Democrat Charles Rauh from Reno County introduced a bill intended to force the House to resubmit the liquor question to a direct vote. His proposal would leave only the constitutional provision against the manufacture and sale of intoxicating liquor. Violators of the constitutional provision would be subjected only to minor fines and could not be sentenced to jail.²³⁴ The Rauh Bill, according to one political observer, posed a definite threat to opponents of resubmission. Failure to resubmit the liquor question on a

²³²Senate and House Journal: 1947, p. 8.

²³³Senate and House Journal: 1947, p. 8.

²³⁴Topeka Daily Capital, 21 January 1947.

concluded would cause "turmoil and confusion in its worst form."²³⁹ The resolution survived five hours of debate and passed 86 to 37.²⁴⁰

Debate in the Senate was brief and uncontroversial. The House resolution reached the Senate floor on January 26.²⁴¹ John Etling, Chairman of the Judiciary Committee, immediately announced that "he did not believe it was necessary to explain the resolution; everybody understood it clearly."²⁴² He moved that it be adopted. There was no debate, except for two dry speeches and a bit of political needling by John Potucek, the only Democrat in the Senate. He inquired if "the majority party was submitting this to the people honestly and advocating that the people support it in 1948, or was it clothed with the usual Republican hypocrisy?"²⁴³ The resolution passed 35-4.²⁴⁴

Rarely had the liquor question been handled with such dispatch. An analysis of the results of the 1946 congressional elections is necessary to understand the attitude of many legislators toward the resubmission question. By 1946 it was impossible to pick up a map and designate wet or dry counties and catalog the legislators accordingly. The 1947 legislature had some out-and-out dry Democrats, as well as, some out-and-

²³⁹Senate and House Journal, 1947, pp. 44-46.

²⁴⁰Topeka Daily Capital, 29 January, 1947.

²⁴¹Topeka Daily Capital, 29 January, 1947.

²⁴²Topeka Daily Capital, 29 January 1947.

²⁴³Topeka Daily Capital, 29 January 1947.

²⁴⁴Senate and House Journals, 1947, p. 93.

out wet Republicans. It was predicted during the campaign that most of the wet vote would be found in the cities and that dry support would come largely from small towns and rural areas. But it failed to work out that way in some legislative contests. One presumed to be sopping wet county elected a resubmission legislator over an ardent dry by an extremely narrow margin. In another county, where World War II veterans were thought to be carrying the wet banner, a young veteran with an unusually dry inclination won a House seat with ease.²⁴⁵ It was apparent by the end of 1947 that Kansans had changed their attitudes toward liquor and the next year they would be given the opportunity to register them.

The legislature's decision to submit the prohibition question to a vote was not the only thing that brought attention to liquor. Newly elected Attorney General Edward Arn began a drive to stop bootlegging and illegal liquor sales. Arn was something of an exception among Kansas attorney generals. He had pledged in his campaign that he would do his utmost to enforce the laws regardless of who got hurt. Once in office he launched the most rigorous enforcement program the state had known in at least a generation. He aimed not only at bootleggers but at everyone who broke the law. Violators were sought out in the best hotels and clubs, property was seized, buildings padlocked, and hundreds jailed.²⁴⁶ He held innumerable conferences with law

²⁴⁵Topeka Daily Capital, 10 November 1947.

²⁴⁶Robinson, p. 265.

enforcement officials. During the legislative session, he went before a Senate committee and requested more investigators. The Senate awarded him two additional investigators with something near a living wage, which raised his field command to a total of three to patrol 50,000 square miles and enforce the prohibitory laws.²⁴⁷ Nevertheless Arn's efforts bore results. The open sale of liquor was curtailed, bootleg prices rose, and many people became nervous about carrying the stuff in their cars and luggage. Law enforcement officers in Kansas counties received close scrutiny from the Attorney General. Dick Driscott, Russell County Attorney, and Ed Steinle, Sheriff of Russell County, were forced to resign following a 10 month siege by Arn's office.²⁴⁸ Kansas was thrown into a state of confusion. The whole state was made conscious for the first time that it had very tough dry laws. According to Arn, "the state's law enforcement policies were the same in all 105 counties"²⁴⁹ and he intended to ensure that those policies were stringently enforced.

An incident took place in 1947 three days before Christmas, that gave even more publicity to the prohibition issue. Melvin Hass, an ex-infantry major, did what thousands of Kansans had done before the holidays. He drove to Missouri, bought two bottles of bourbon for himself and seven bottles for some friends, and toted them back to Kansas in his car.

²⁴⁷Small, p. 68.

²⁴⁸Topeka Daily Capital, 2 December 1947.

²⁴⁹Wichita Morning Eagle, 10 December 1947.

what happened to him next was quite unusual. A state highway patrolman who ordinarily paid no mind to citizens bringing in small amounts of liquor, stopped and searched his car and explained, a little sheepishly, that they had mistaken his Lincoln Zephyr for the car of a Texas bootlegger. His car and liquor were confiscated, he was fined \$200, and sentenced to jail. Later the jail sentence was dropped.²⁵⁰ The Attorney General was flooded with letters criticizing the severity of the penalty. Many Kansans who had laughed for years over flouting the law were outraged at the hypocrisy of other citizens who voted dry and drank wet. They believed that Hass had been given an unusually heavy sentence in view of the fact he had only a comparatively small amount of liquor in his possession.²⁵¹

According to Arn, "Mr. Hass had the goods in his possession and Patrolman E.P. Moomau did his duty."²⁵² A group of Wichita businessmen started a fund to buy a new car for Hass and formed an "It Could Happen To Me" Club, hoping that the publicity would help defeat prohibition at election times.²⁵³

The Hass incident markedly changed the drinking customs of Kansans. The amount of whiskey transported into the state

²⁵⁰"Nine Little Bottles," Time, 51 (12 January 1948), p. 8. See also Topeka Journal, 29 December 1947 and Kansas City Times, 30 December 1947.

²⁵¹Kansas City Times, 30 December 1947.

²⁵²Topeka Journal, 29 December 1947.

²⁵³Robinson, p. 265.

y car and in suitcases dropped appreciably. Kansans were chilled" by the prospect that the law would be applied to everyone, and not just the bootlegger who wrote off the fines as a cost of doing business. The chance that the law could punish respectable citizens, too, was appalling to many.²⁵⁴ Arn did little to ease their concerns. He warned Kansans against any attempt to bring any liquor into Kansas via automobile, train, or airplane--and citizens should also remember that keeping a little liquor in their home or private club locker makes them just as guilty as the bootlegger with a hundred cases in his possession."²⁵⁵ He concluded that "if that's too rough a law, don't blame the law enforcement officers or the judge who sentences you--they have no alternative and they didn't make the law."²⁵⁶ Kansans would have an opportunity to change the law in the 1948 general election. Until then, otherwise law abiding citizens could expect that the dry law would continue to be enforced as it was written. Arn agreed that the law had never been 100 percent effective, but thought it was being fairly well enforced by excellent cooperation between his office and from most county and city law enforcement officers and that it could continue to be enforced.

This was the situation close to the 1948 general election. Liquor law enforcement had become more widely

²⁵⁴Kansas City Star, 18 January 1948.

²⁵⁵Topeka Journal, 29 December 1947.

²⁵⁶Topeka Journal, 29 December 1947.

discussed than politics. Resubmission of the repeal amendment elicited little discussion. Talk dealt primarily with the Bone Dry Law now being enforced; which, according to the Kansas City Star, "had more teeth than an alligator."²⁵⁷

One historian has remarked that "one of the most interesting referendums in Kansas history occurred in 1948."²⁵⁸ Preliminaries began with the major parties holding their traditional celebrations in Topeka. The Republicans meet on January 29 for the whirl of Kansas Day events.²⁵⁹ Meanwhile, the Democrats gathered on February 14 for Washington Day celebrations.²⁶⁰ As expected, both parties spent much energy mulling the new turn in the liquor situation. According to the Kansas City Star, "The new conversational tidbit may even affect the quantity of beverages imbibed at both gatherings."²⁶¹ Nevertheless, neither party was willing to take a definite stand on the liquor question.²⁶²

On January 20 an organization known as the Kansas Legal Control Council was formed to "present a factual campaign for repeal" and it was out to disprove the theory that Kansans could be depended on to stagger to the polls and vote dry.²⁶³

²⁵⁷Kansas City Star, 18 January 1948.

²⁵⁸O'Brien, 17 February 1985, p. 7.

²⁵⁹Kansas City Star, 18 January 1948.

²⁶⁰Kansas City Star, 18 January 1948.

²⁶¹Kansas City Star, 18 January 1948.

²⁶²Woodbury, p. 116.

²⁶³Kansas City Star, 21 January 1948.

According to E.C. Moriarty, oilman and former Wichita mayor, the organization was composed of "outstanding and influential men in all walks of life and it will be nonpartisan and nonfactional."²⁶⁴ The council chose Leo Mulloy, businessman and graduate of Washburn Law School, as their Executive Secretary. His first step was to make the "wet" cause respectable, and he convinced approximately 10,000 prominent citizens throughout the state to sign a card which carried these words: "Believing that Prohibition has failed, I endorse Legal Control and am willing to be named as a member of the Kansas Legal Control Council."²⁶⁵ He persuaded outstanding men and women in nearly every walk of life to sign these cards-- leaders in industry, agriculture, labor, education, and other professions and then published their names in full-page newspaper advertisements all over the state.²⁶⁶ The slogan "Vote Yes For Decency" was devised and a pamphlet entitled Beware of Dry Rot was widely distributed. In contrast to the 1934 referendum, the wet forces were organized and ready to present their position to the citizens of the state.

The highly readable pamphlet, Beware of Dry Rot stirred up controversy everywhere because it undertook to prove with facts and figures that prohibition was bad for everybody but bootleggers. It maintained that Kansas had a higher rate of juvenile delinquency than any other state in the nation, more

²⁶⁴Kansas City Star, 21 January 1948.

²⁶⁵Woodbury, p. 116.

²⁶⁶Kansas City Star, 21 January 1948.

crime per capita than its neighboring wet state of Nebraska, more drunken driving, and just as much alcoholism.²⁶⁷ In addition, at least \$24 million in Kansas income was being paid to bootleggers or out-of-state liquor dealers every year, and the state was losing more than \$1 million in taxes annually.²⁶⁸ The pamphlet reasserted the conclusion of the Legal Control Council that Kansas laws failed to stop the flow of liquor and that what was needed was a proper control measure not prohibition. Bishop Mark Carroll of the Catholic diocese of Wichita agreed that "prohibition has failed miserably in Kansas."²⁶⁹

The distribution of Beware of Dry Rot throughout the state aroused the dry forces to furious action. The United Dry Forces, organized in 1937, immediately counterattacked by publishing their own pamphlet, They Are All Wet. The pamphlet announced that most of the wet arguments were "half-truths and distortions set up by the professional wets to influence the election."²⁷⁰ The Woman's Christian Temperance Union issued the Black Book of Repeal, which stated that drunkenness and insanity followed legalized liquor.²⁷¹

²⁶⁷Beware of Dry Rot, Prohibition Clippings, 1948, (Kansas State Historical Society, Topeka), p. 15.

²⁶⁸Woodbury, p. 116.

²⁶⁹Kansas City Star, 21 January 1948.

²⁷⁰They Are All Wet: An Examinatin of Dry Rot, Prohibition Clippings, 1948, (Kansas State Historical Society, Topeka) p. 15.

²⁷¹Robinson, p. 266. See also The Black Book of Repeal, Prohibition Clippings, 1948, (Kansas State Historical Society, Topeka).

The drys created more publicity with the Temperance Tornado. Led and financed by Willard Mayberry, rancher and publisher of the Elkhart Tri-State News, the Temperance Tornado recruited teenagers and enlisted the help of famed runner Glenn Cunningham.²⁷² The caravan of young crusaders traveled 1500 miles in twelve days expounding on the evils of liquor. According to Newsweek, the Temperance Tornado "caused more chuckles than castrophe."²⁷³ Its organizers were sincere but unsuccessful.

A few rowdies heckled the Temperance Tornado. In Kinsley, Glenn Cunningham speaking from a sound truck said, "the greatest record I have is that I have never tasted liquor." A main street tavern keeper thereupon sent him a glass of beer. The caravan was greeted later in Lyons with a sign reading, "The bootleggers of Lyons welcome you and assure you of their cooperation,"²⁷⁴ Most party politicians avoid the Tornado. August 19 at an after dark rally on the capitol steps, no state official or party candidate was present. Governor Carlson, who was seeking a second term, had a dinner engagement in Manhattan. Attorney General Arn, who was accused by drys of helping the wet forces by trying to enforce the law, said it was his night to go bowling.²⁷⁵ Politicians

²⁷²"March of the Drys," Newsweek, 32 (30 August 1948), p. 21.

²⁷³"March of the Drys," p. 21

²⁷⁴Robinson, p. 266.

²⁷⁵"March of the Drys," p. 22.

across the state realized that dry and wet votes counted the same. The Temperance Tornado was unable to persuade the young people of Kansas that liquor was evil. What hurt the Temperance Tornado worse than the public ribbing and lack of political support was public apathy.

One of the most interesting aspects of the 1948 referendum was the attitude of both the major parties. Neither party was willing to take a definite stand. By ignoring the issue both parties hoped to gain votes from the wets and drys.²⁷⁶

On August 31 the Republican Council chose not to address the issue. Governor Carlson, who dominated the writing of the platform framing, reaffirmed the position that the people of Kansas were entitled to an expression of opinion on the liquor issue.²⁷⁷ The platform reaffirmed the party's position two years earlier that prohibition was a moral, not a political issue.²⁷⁸ The party resisted Senator Cappers plea that it oppose repeal. Democrats began their campaign with the assertion that liquor was not a political issue.²⁷⁹ The party believed that the liquor issue was of so much importance that it transcended ordinary politics, therefore, it was not a proper subject for inclusion in its platform.²⁸⁰ The liquor

²⁷⁶Topeka Daily Capital, 1 September 1948.

²⁷⁷Topeka Daily Capital, 1 September 1948.

²⁷⁸Topeka Daily Capital, 1 September 1948.

²⁷⁹Topeka Daily Capital, 2 September 1948.

²⁸⁰Topeka Daily Capital, 1 September 1948.

attle would be fought between the professional dry organizations and the newly formed Legal Control Council.

As the election drew near, feelings became more intense. Fanatical wets defaced dry signs in some places or tore them down, and equally fanatical drys made threats on the life of Leo Mulloy, President of the Legal Control Council, and inaugurated a telephone picket of his home.²⁸¹ Both sides flooded the state with advertising. The words "Vote Yes" or "Vote No" were seen everywhere. Leo Mulloy made over 200 speeches, while Dr. C.D. Walker, President of the United Dry Forces made half that number. Mulloy accused the drys of accepting big contributions from bootleggers, and then drys said the wets were subsided by "the whiskey trust."²⁸² The referendum contest was more colorful than the national and state elections.

On November 2, Kansans voted by a majority of 63,984 to repeal constitutional prohibition.²⁸³ For the first time in 8 years Kansas was legally wet. The Attorney General received requests from citizens on the proper procedure for establishing retail liquor stores.²⁸⁴ According to Arn "the constitutional question which was submitted at the last

²⁸¹Woodbury, p. 117.

²⁸²Woodbury, p. 117.

²⁸³Kansas State, Thirty-sixth Biennial Report of the Secretary of State: 1947-1948, (Topeka: Kansas State Printing Plant, 1948), p. 96. Hereinafter cited as Thirty-sixth Biennial Report.

²⁸⁴Alden C. Bushnell to Edward F. Arn, 15 November 1948, Attorney General Opinions.

general election on November 2, was not in itself self executing."²⁸⁵ The 1949 legislature was left to decide on the regulation and control of liquor.

An analysis of the final results of the 1948 referendum reveal some interesting facts as to why Kansas voted to abandon a 68-year-old tradition. First most counties that went wet in 1934 again voted wet with larger percentages. On the other hand, most counties that voted dry in 1934, and did again in 1948 dropped in percentages.²⁸⁶ Also Kansas had been experiencing a shift in population from rural to urban areas for a number of years and some formerly dry counties went wet, including Carry Nation's own Barber County.²⁸⁷ When prohibition won by a margin of 89,000, in the referendum four years earlier radical and moderate drys declared that the 1934 referendum offered no guarantees against the return of the open saloon. The 1948 referendum article forbade the saloon.²⁸⁸ Seemingly the wet victory was the product of war veterans and young businessmen. The older generation of fanatic days had died faster than new ones had grown up. According to one national magazine, "the war boosted the wet cause."²⁸⁹ Veterans in wartime travels had concluded that drinking wasn't a vicious crime after all. Thousands of

²⁸⁵Edward Arn to Alden C. Bushnell, 18 November 1948, Attorney General Opinions.

²⁸⁶Topeka Daily Capital, 3 November 1948.

²⁸⁷Topeka Daily Capital, 3 November 1948.

²⁸⁸Topeka Daily Capital, 3 November 1948.

²⁸⁹"Kansas Capitulation," p. 21.

factory workers and servicemen imported bootleg liquor into the state. Many citizens figured that if liquor was being sold, regardless of the law, it might as well be taxed.²⁹⁰ By the November election the issue was economic as well as moral.

With prohibition swept out the 1949 legislature was faced with the task of enacting a liquor control law. On January 17, 1949, the legislature was presented with Governor Carlson's Liquor Control Bill. It provided for the licensing of manufacturers, distributors, and sellers with regulation and taxation the responsibility of a Department of Alcoholic Beverage Control. Those areas that had voted dry in November could remain dry if they choose and many of them did.²⁹¹ For two months the legislature wrestled with the problem, and passed a 3,500 word bill that closely followed the Carlson Plan. The Kansas liquor law was strict and one newspaper wrote: "One considering thought is that those who don't quite qualify to operate a liquor store under Kansas' highminded and stringent law may be able to make the ministry."²⁹² By July 8, 1949, liquor was arriving in Kansas by the truckload.²⁹³

²⁹⁰"Kansas Wets its Toes," p. 26.

²⁹¹Robinson, p.266.

²⁹²Robinson, p. 266.

²⁹³Robinson, p. 266.

Epilogue

Between 1933 and 1948 something startling occurred in Kansas. During these 15 years, Kansas witnessed the waning of prohibition as beer was openly sold in almost every city and town by the summer of 1933. Kansas courts refused to convict sellers of beer on the grounds that the prohibitory amendment did not define "intoxicating" liquor in terms of percentage of alcoholic content, therefore, juries were left with the decision. Until the Plummer-Schrepel bill legalized beer in 1937, Kansas was faced with confusion concerning the enforcement of its prohibition laws.

Once Kansas had their beer, they wanted liquor. The years following the legalization of 3.2 beer proved pivotal in the history of prohibition. Enforcement of the prohibitory law broke down, and prohibition was disregarded by many Kansans. It was commonly assumed that Kansas would remain dry as long as the wets had their liquor. In 1945 the prohibition situation was made obvious when federal agents seized 12,000 fifths of whiskey. Suddenly, Democratic leaders were claiming that Kansas was "dripping wet," and in 1946 repeal of the prohibitory amendment became a focal issue. Then in 1947, through the efforts of Attorney General Edward Arn, Kansans were made aware that the Bone Dry Laws were tough and if enforced would not only have consequences on the bootlegger, but respectable citizens. By 1948 most citizens of the state

were willing to abandon constitutional prohibition for legal control.

The importance of Kansas prohibition has often been overlooked by historians. This thesis has been written to show the importance of prohibition in the character of the state. An understanding of the 1933-1948 period helps to explain contemporary attitudes over the availability of liquor and the saloon. Prohibition divided Kansas longer than any other issue in its history, and this thesis has examined its waning and repeal.

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