

1923

KENYA

55582

TO: *offices*

DATE
17th Nov, 1923

RE:
R: 19 NOV 23

CIRCULATION:
Mr. *E. G. ...*
Mr. *...*
Mr. *B. ...*
Asst. U.S. of S.

Perm. U.S. of S.
Emb. U.S. of S.
Secretary of State.

SUBJECT
Beer Ordinance 1923
See to ...

Previous Paper
200
42801

MINUTES
Will you please advise whether we should make any comments as to the bearing of the Imperial Act, referred to in sending a copy of this to Kenya? Will you also consider whether it is not necessary to make some specific provision in the Beer Ordinance regarding "native intoxicating liquor," see Ordinance 200/1921? It does not seem clear that the definition of "beer" excludes all varieties of native intoxicating liquor. JHC
22-11-23

4 DEC 1923
1685 com 5 Dec 23
copy to ...
...

I do not think any comment by us on the Statute referred to is called for.

Subsequent Paper
200
23340

They will be considered by the local authorities in the light of the last part of the observations

I think all rather intoxicating liquors will be excluded from the list unless (1) it is sold as beer & (2) contains more than 2% of alcohol & that that no amendment is necessary on this point

A.L.

28/xi

Beer includes - any liquor which is made of a substance fit for food and which contains more than 2% of pure spirit. I cannot help feeling that a court may easily hold that that includes some native intoxicating liquors.

2. signify non-disallowance, send copy of B. of Customs letter and enquire of the various liquors, & also, thank B. of Customs & say copy being sent to Gov.

29-11-23

W.L. 23

It is certainly worth while raising a point.

MINUTES

MINUTES NOT TO BE WRITTEN
ON THIS SIDE.

They will be considered by the local authorities in the light of the last part of the observations

I think all native intoxicating liquors will be excluded from the list unless (1) it is sold as beer + (2) contains more than 2% of alcohol + that that no amendment is necessary on this point

A.L.

28/21

Beer includes - any liquor which is made from a suitable raw material and which contains more than 2% of pure spirit. I cannot help feeling that a court may easily hold that that includes some native intoxicating liquors.

I signify non-disallowance, endorsement of B. of Distances letter and enquire as to native liquors, & check with B. of Distances, & any copy being sent to Gov.

1/16
29/11/23

W. H. G. 11/23

It is containing with
while serving liquor.



Colony and Protectorate of Kenya.

IN THE ELEVENTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.
MAJOR-GENERAL SIR EDWARD NORTHEY,
K.C.M.G., C.B.,
Governor.

Assented to in His Majesty's
 name this 15th day of March,
 1921.

EDWARD NORTHEY,
Governor

An Ordinance to Regulate the Manufacture and Sale of Native Intoxicating Liquors.

BE it enacted by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof:—

1. This Ordinance may be cited as "The Native Liquor Ordinance, 1921." Short title.

2. In this Ordinance:—

Definitions.

"Local authority" means the Council of any Municipality constituted under the Municipal Corporations Ordinance, 1909, or any Ordinance substituted therefor and any committee or other authority appointed under the East Africa Townships Ordinance, 1908, for the purpose of the said Ordinance.

"Licensing Board" means the person or body of persons authorised to grant, renew or transfer licences under this Ordinance.

"Native intoxicating liquor" means pombe, fermented asali, tembo kali, and all liquors such as are prepared by natives which contain more than one per centum by weight of absolute alcohol.

"Sale" includes barter.

3. The Governor-in-Council may from time to time by proclamation apply this Ordinance to any area in the Colony and Protectorate and upon its application this Ordinance shall come into full force and effect within the limits of such area. Application of Ordinance.

Provided that the Ordinance shall not be applied to any area where there is a Local Authority except at the request of such Local Authority and that it shall not be applied to any area where there is no Local Authority except at the request of the Administrative Officer in charge of the area.

Licensing Boards

(1) The Governor may appoint in any Township or other area a Licensing Board consisting of three members of whom two including the Chairman shall be a quorum for the consideration and determination of applications for or relating to the granting, renewal or transfer of licences for the manufacture and sale of native intoxicating liquor and may fill any vacancy arising in such Board through the absence of any member or from any other cause.

(2) No member of a Licensing Board shall have any interest in any application before the Board.

(3) The Resident Commissioner shall be Chairman of such Board provided that in Townships or other areas where there is no Resident Commissioner the District Commissioner or such other person as the Governor may appoint shall be the Chairman.

(4) The decision of the majority of the members shall be the decision of the Board and in the case of an equality of votes the Chairman shall have a casting as well as a deliberative vote.

(5) A Licensing Board shall have power to refuse any application or all applications made to it.

(6) The powers and duties of a Licensing Board shall, in respect to which no Licensing Board has been appointed, be exercised and performed with effect by the District Commissioner or the District Officer or by such other person as the Governor may appoint.

Licensing Boards when sit

(7) Licensing Boards shall sit on the 1st Monday in December and at the discretion of the Chairman may sit on the 1st Monday in June in each year or on a date as near to those dates as may be possible at such time and place as the Chairman shall direct and shall consider and determine all applications for the granting, renewal, transfer, removal and refusal of any licence in respect of which notice has been given.

(8) At least one month's notice of any sitting shall be given by the Chairman in the Gazette.

Who may sell licence

(9) No licence shall be issued under this Ordinance to any person other than persons of African extraction or of Arabian extraction born in Africa.

(10) No licence to sell in a Township shall be issued to a female.

Employment in connection with the sale

(11) No female shall be employed in connection with the sale of native intoxicating liquor on licensed premises in a Township except with the special permission of the Licensing Board and any such permission to be endorsed on the licence.

Manufacture or sale of native intoxicating liquor

(12) No person unless he holds a licence issued under this Ordinance shall manufacture for the purpose of sale or shall sell native intoxicating liquor.

Articles of licence

(13) Every licence issued under this Ordinance shall authorise the holder to manufacture and sell native intoxicating liquor on such premises or in such village only as the Licensing Board shall approve and specify on the licence and in a Township shall be displayed in a conspicuous place in the licensed premises.

(14) No premises in any Township shall be licensed unless they are approved by the Licensing Board and by the Medical Officer of Health and further provided that such premises are furnished and equipped to the satisfaction of the Board and no such premises shall be used for any purpose other than that for which the licence was granted (except as an eating house) except by permission of the Licensing Board endorsed on the licence.

Premises on private land

(15) A licence in respect of premises on private land shall not be issued unless the consent of the occupier of the land has first been obtained.

Special temporary licences

(16) Notwithstanding anything hereinbefore contained a Licensing Board may issue a special temporary licence authorising the person named therein to sell native intoxicating liquor on premises named in such licence on the date and during the hours named therein.

Fee

(17) There shall be payable in respect of any licence issued under this section and in respect of any transfer of any licence such fees as the Governor in Council may from time to time fix to be paid in the Gazette.

Duration of licence

(18) Every licence granted under this Ordinance shall expire on the 31st day of December of the year in respect of which it was issued provided that where application has been made for the renewal of such licence the holder shall continue to hold the licence until the decision of the Licensing Board has been notified to the applicant and for seven days thereafter.

(19) In any Township the Local Authority may prescribe the hours and hours during which native intoxicating liquor may be sold.

(20) In any Township where the Local Authority has not prescribed the hours during which native intoxicating liquor may be sold no such liquor shall be sold between the hours of 8 p.m. and 8 a.m.

(21) No person who has been granted a licence under this Ordinance shall supply any native intoxicating liquor to

- (a) To any Non-African
- (b) To any female in a Township
- (c) To any person apparently under the age of 18 years
- (d) To any drunken person
- (e) To any person except for consumption on the premises specified in the licence or for purposes of transport from the place of manufacture to licensed premises

Provided that in the Provinces of Seydlie and Tainland any native desiring to purchase native intoxicating liquor outside his reserve for consumption in his reserve shall obtain a permit to possess and transport such liquor from the place of purchase to the intended place of consumption. Such permit shall be in writing and shall be obtained from the District Commissioner of the district in which the licensed premises are situated who shall have absolute discretion to refuse its issue; and there shall be stated on the permit the date of issue, the date of expiration, and the quantity of liquor to be so possessed and transported.

(22) A licence granted under this Ordinance shall not be transferable from one person to another person or from one set of premises to another set of premises except with the consent in writing of the Licensing Board which may refuse such consent.

(23) Any unlicensed person who shall manufacture for the purpose of sale or shall sell native intoxicating liquor and any licensed person who shall manufacture for the purpose of sale or shall sell native intoxicating liquor on premises other than those authorised by his licence shall be guilty of an offence and shall upon conviction be liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding £100 or to both such fine and imprisonment and to forfeiture of any licence issued under this Ordinance.

(24) Any person in a Township found in possession of native intoxicating liquor off licensed premises shall be guilty of an offence unless he shall prove that the liquor in question was being transported from the place of manufacture to licensed premises for the purpose of sale thereon and shall be liable on conviction to a term of imprisonment not exceeding one month or to a fine not exceeding £5 or to both such fine and imprisonment and the liquor in question shall be confiscated. Provided that this section shall not apply to a person who is holding a permit under the provision in Section 11 (6).

(25) If any premises licensed under this Ordinance for the manufacture for the purpose of sale or for the sale of native intoxicating liquor shall in the opinion of the Licensing Board become unsuitable or shall fall into disrepair the Licensing Board may suspend the licence until such premises have been made conformable to its requirements.

(26) Any premises in any Township licensed for the sale of native intoxicating liquor shall be provided with such fitting accommodation as the Medical Officer of Health or in the absence of a Medical Officer of Health as the District Commissioner or Resident Commissioner shall direct.

(27) No person holding or having held a licence to sell native intoxicating liquor shall be entitled to claim a renewal of such licence as of right or to claim any compensation in respect of such licence if such licence is not renewed.

(28) No licensee shall allow drunkenness on his licensed premises.

Hours of sale of native intoxicating liquor

To whom may be sold

License not to be transferred without sanction

Sale on unlicensed premises

Being in possession of native intoxicating liquor off licensed premises

Unsuitable premises

Fitting accommodation

No vested interest created by licence

Drunk and disorderly persons

(3) There shall be payable in respect of any licence issued under this section such sum as the Governor-in-Council may from time to time proclaim, provided always that no sum shall be payable in respect of any licence granted to tap trees for palm wine intended for private consumption by the owner or his household or dependents and not for purposes of sale. Such licences shall be endorsed by the District Commissioner with such conditions as he may think necessary.

(4) Any Magistrate or Police Officer of or above the rank of an Assistant Sub-Inspector or any European Police Constable shall have power to demand and inspect any licence issued under this section. Refusal to produce a licence when so demanded shall be deemed to be an offence. Such offence shall be cognisable to the Police.

(5) Any person who shall commit any offence under this Ordinance or shall contravene any of the provisions of this Ordinance shall, where other provision is not made by this Ordinance, be liable to a term of imprisonment of either description not exceeding six months or to a fine not exceeding 150 or to both and to forfeiture of any licence under this Ordinance.

Penalties.

(6) This Ordinance shall not be deemed to limit the application of the provisions of the Native Authority Ordinance, 1912.

Saving.

(7) Notwithstanding anything to the contrary contained in this Ordinance the Governor-in-Council may at the request of a Local Authority in charge of any area declare by proclamation in the Gazette that the right to manufacture and or sell and supply native intoxicating liquor in such area is vested exclusively in the Local Authority and thereupon such Local Authority may establish breweries and canteens or hostels for the purpose of manufacture and or sale of native intoxicating liquor.

Application by Local Authority for exclusive right to manufacture and sale.

(8) Such Local Authority shall not be required to apply for any licence under this Ordinance in respect of any canteen or hostel so established.

(9) All breweries, canteens or hostels so established shall be registered in a register to be kept by the District Commissioner.

(10) From and after the date of any proclamation as hereinbefore mentioned no further licences shall be granted under this Ordinance in respect of any premises within the area within which the Local Authority is authorised to establish breweries, canteens or hostels and no licence existing at the date of the proclamation shall be renewed or transferred.

(11) The Governor-in-Council may from time to time make Rules for any of the following purposes:

Power to make Rules.

(1) For the confiscation of any liquor manufactured or being manufactured or kept in contravention of this Ordinance and of all instruments and utensils appropriate thereto.

(2) For the manufacture for the purpose of sale of for the sale of native intoxicating liquor by any Local Authority and the management and control of the breweries, canteens or hostels of such Local Authority.

(3) For the taking of samples and for the analysis of native intoxicating liquor manufactured for sale or sold by a Local Authority or any other licensed person.

(4) For the prohibition of the manufacture for the purpose of sale or sale by any person of any native intoxicating liquor exceeding the strength of 7.5 per centum by weight of absolute alcohol.

(5) For the provision of co-operative arrangement between Local Authorities for the manufacture for the purpose of sale or sale of native intoxicating liquor.

(6) For providing that any officer duly appointed for that purpose shall at all reasonable times have the right to enter and inspect any brewery, canteen or hostel established by a Local Authority for the purpose of ensuring...

(a) That good order and proper standards of comfort and cleanliness are maintained.

(b) That proper books of accounts are kept by the Local Authority in connection with the manufacture for the purpose of sale or sale of native intoxicating liquor and for the purpose of examining and auditing the same.

(c) For the purpose of inquiring into any complaints against the proper conduct of the premises and for the above purposes the Local Authority shall afford all reasonable facilities and assistance to such officers whilst engaged in the foregoing duties.

(7) For providing that such officer shall transmit a written report of any such inspection as mentioned above to the Chief Native Commissioner as to the facts ascertained by such inspection and a copy of such report shall be transmitted to the Local Authority concerned.

(8) For providing that should such Local Authority fail to maintain to the satisfaction of the Governor any brewery, distillery or hostel the Governor may direct by proclamation in the Gazette that all powers, duties and authorities conferred under this Ordinance on such Local Authority shall be temporarily transferred to and vested in the Senior Resident Commissioner or any other suitable Government Officer who shall exercise all such powers and authorities on behalf of the Local Authority.

(9) For providing that all profits accruing to a Local Authority from the manufacture for the purpose of sale and sale of native intoxicating liquor shall be expended in such ways and on such projects on behalf of the natives resident in the area controlled by such Local Authority as may to the Governor seem best and expedient.

(10) For the fixing of any fees to be charged for services rendered in connection with this Ordinance.

(11) Generally for the better carrying into effect of the purposes of this Ordinance.

30. The East Africa Native Liquor Ordinance, 1907, the East Africa Native Intoxicating Liquor Ordinance, 1908, and the East Africa Native ~~Intoxicating~~ Liquor Ordinance, 1915, are hereby repealed.

Passed in the Legislative Council the twenty-fifth day of February, in the year of Our Lord one thousand nine hundred and twenty-one.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council and found by me to be a true and correct printed copy of the said Bill.

H. MALPASS,

Clerk of the Legislative Council.

Presented for authentication and assent as a correctly and faithfully printed copy of the Bill as passed by the Legislative Council.

W. K. NOTLEY,

Acting Colonial Secretary.

R. W. LYALL GRANT,

Attorney General.

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W. K. NOTLEY,
Acting Colonial Secretary.

R. W. LYALL GRANT,
Attorney General.

... to the Letter
...
The Secretary
Custom House,
London, E.C. 3.
... to any particular
... The following
... should be stated
54840/1923.



CUSTOM HOUSE, LONDON, E.C. 3.
17th November 1923.

55582

R
R 19 NOV 23

[Handwritten signature]

Sir,

With reference to your letter No. 42801/1923 of the 19th September last, enclosing copies of a despatch from the Acting Governor of Kenya and of the "Beer Ordinance, 1923", together with an explanatory memorandum by the Acting Attorney General, the Board of Customs and Excise offer the following observations:-

(1) The ordinance deals solely with the manufacture of beer and the charge of duty upon it, and does not attempt to deal with the sale of beer or the necessity for a licence authorising sale. It is stated to be based on the provisions of the Inland Revenue Act 1880, and the Customs and Inland Revenue Act, 1885, but it also includes certain provisions of the Customs and Inland Revenue Act, 1889, and the Finance Act, 1896.

Later Acts of Parliament amending or extending the Inland Revenue Act, 1880, do not appear, however, to have been taken into consideration, and attention is therefore drawn to the following provisions of the enactments referred to, viz:

Finance (1909-1910) Act, 1910 - 10 Edw. 7, c. 8.
1st Schedule - Scale 2 - Licence to Brewers for Sale, and Paragraph 3 of the "Provisions applicable to Manufacturers' licences".

Finance Act, 1914 (session 2) - 5 Geo. 5, c. 7.
S. 7 - Amendment of law as to determination of gravity of Worts of beer.

S. 8 - Certain liquors not to be treated as beer.

S. 10 - Limit of time for payment of beer duty

(Note:- This section has been superseded by section 12 of the Finance Act, 1918).

Finance Act, 1915, - 5 & 6 Geo. 5 c. 62.

S. 4 - Allowance in respect of duty on spoilt beer.

(Statutory Rules and Orders 1915, No. 1058)

Finance Act, 1918, - 8 & 9 Geo. 5 c. 15.

S. 12. - Limit of time for payment of beer duty

(2) Section 2. The definition of "licensed premises" is very wide. It would cover buildings or places used by or on behalf of a licensee, only at, or in proximity to his brewery premises, but also in another part of the Colony, and whether used for the purpose of brewing or not.

The definition of a "degree of gravity" is unnecessary as it is incorporated in Section 7 (1) of the Ordinance, but definitions appear to be desirable in respect of the following terms.

- "Prescribed" (see sections 9, 12 and 14)
- "Approved" (see section 7 (1))
- "Paper Officer" (see section 12 (9))
- "Night" (see section 23 (2))

- (3) Section 3. Only one rate of licence duty is specified but the sub-sections (1) and (3) both refer to "duties".
- (4) Section 11. While provision is made for repayment of on beer destroyed at the brewery, no provision, similar to that in Section 4 of the Finance Act, 1915, is made for beer which is destroyed after leaving the brewery.
- (5) Section 14. This section does not prescribe the mode of making entries, nor impose any penalty for infringement, such as are provided for in the Excise Management Act, (7 & 8 Geo. 4, C. 53) the Excise Management Act, 1834 (4 & 5 Wm. 4, c. 51) and the Revenue Act, 1898 (61 and 62 Vict, C. 46). (General penalties in 4 & 5 Wm. 4 C. 3. S. 6 & 7 apply to breaches of the section in the Imp. Act requiring a brewer to make entry of premises, and possibly other ordinances of the Colony contain similar general provisions).
- (6) Section 19. The provisions of section 8 (2) of the Customs and Inland Revenue Act, 1885 (48 and 49 Vict. guarding against the dilution of beer by dealers and retailers, and of section 11 of the Finance Act, 1896 (59 and 60 Vict. c. 28) prohibiting the possession of Sugar and other substances by dealers in and retailers of beer, have been omitted, perhaps intentionally, from the Ordinance.
- (7) Schedule. A new table of gravities has been provided in the Finance Act, 1914 (Session 2) which supersedes the one given in the first schedule to the Inland Revenue Act, 1880.
- (8) The Ordinance having already the force of law attention is drawn to the above points, merely for consideration if and when any amendment of the Ordinance is contemplated. It is suggested that their omission would give rise to any serious difficulty in administering the Ordinance and it is realised that differences in local conditions may make it inadvisable to adopt certain of the suggestions.

I am, Sir,

Your obedient Servant,

J. W. Skott

The Under-Secretary of State,
Colonial Office.

B.C.

55502/22

245
3 Dec
1823

Kenya

And

Sir

5 Dec

Annual
25340

DRAFT.

Kenya

No. 1685.

Per

MINUTE.

Mr. Whiteaker

Mr. Calder ²¹ 24.11.23

Mr.

Sir C. Davis.

Sir G. Grindle.

Sir H. Hoad.

Sir J. Masterton Smith.

Mr. Ormsby-Gore.

Duke of Devonshire

I have the honor to ack.
the receipt of Mr. No. 1168
desp. No. ~~1168~~ of the 26th of
July with which was sent
copies of the Beer Order,
1923, together with statement
by the Attorney General

I have to inform you

that His Majesty will
not be advised to exercise
his power of disallowance
in respect of ^{the} Order,

I enclose for your info.
a copy of a letter containing
the opinions of the Bd. of
Customs & Excise on ^{it} ~~the~~
I observe that the opinion
is in favor of the

Per 157 Customs 17th Nov
55502/23

L. J. S.

fact that there seems some danger
that an effort may be made to include
Native liquors in the category of
substitutes for beer ~~under so~~, it
would seem necessary that the
Order should define clearly the
position as regards Native liquors.
I shall be glad to have your views on
this point

I have

of beer includes "any liquor which is made
or substituted for beer" and which
analysis includes more than 2% of
proof spirit. I presume that it is
not intended that the Beer Act
should apply to native intoxicating liquors
and I shall be glad to know
your opinion the Act makes that
sufficiently clear.

JH

(Signed) DEVONSHIRE

555 82 21 200

Kenya
~~18th Dec 1923~~
4 DEC 1923

Si

Ind ✓

I am to ask the next of
your letter (No. 17th / 14th / 1923) to
request you to come to the

DRAFT.

The Secretary
Custom House
S. C. 3
MINUTE.

- Mr. Whiteaker
- Mr. Calder 29.11.
- Mr. 29.11.
- Sir C. Drove
- Sir G. Grindle
- Sir H. Read
- Sir J. Masterton Smith
- Mr. Ormsby-Gore
- Duke of Devonshire

Board of Customs. I receive an
expression of his thanks for
the trouble they have been
good enough to take. The
Kenya Beer Co. has
copy of your letter
being forwarded to the
Gov. of Kenya

I am

(Signed) H. J. READ