

MRS. BETSY O'REILLY GAMBLE, *Las Vegas, Nevada*.

DEAR MRS. GAMBLE: Mr. Arthur M. Allen, Special Agent of the Department of Justice, has handed us your letter of the 17th instant, wherein you ask whether an election ballot marked with ink should be counted. Replying thereto, will say that the law (Stats. 1917, p. 372) specifically provides that the voter—

shall prepare his ballot by stamping a cross or X in the square, and in no other place, after the name of the person for whom he intends to vote for each office. In case of a constitutional amendment or other question submitted to the voters, the cross or X shall be placed in the square after the answer, which he desires to give.

Such stamping shall be done with a stamp in black ink, which stamp, ink, and ink-pad shall be furnished in sufficient number by the County Clerk for each election precinct in the county.

In *State v. Baker and Josephs*, [35 Nev. 300](#), the court held that ballots upon which the cross was made with lead pencil or pen or by marking with the wrong end of the stamp, as with pen or brush, should be rejected. Trusting that the above gives you the desired information, we are

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

BY WM. McKNIGHT, *Deputy*.

243. Prohibition—Initiative Prohibition Law—Time of Taking Effect.

The initiative prohibition measure will become a law and take effect at 12.01 a.m., December 17, 1918.

CARSON CITY, November 23, 1918.

HON. HARLEY A. HARMON, *County Clerk, Las Vegas, Nevada*.

DEAR MR. HARMON: We are in receipt of your recent letter, in which you request to be advised as to the exact time the initiative prohibition law takes effect.

Section 3 of article 19 of the Constitution provides that if a majority of the qualified electors voting upon an initiative measure shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote.

In section 26 of the Act relating to elections (Stats. 1917, p. 367) it is provided:

and on the third Monday of December succeeding such election the Chief Justice of the Supreme Court and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State, and shall open and canvass the vote * * * for and against any questions submitted.

The third Monday of next December, the day on which the votes will be officially opened and canvassed, comes on the 16th day of that month. The official declaration of the vote will, therefore, be made on December 16, 1918.

It is *from the date* of such official declaration that an initiative measure receiving a majority of the votes cast becomes a law and takes effect.

“From the date” was said by Lord Mansfield, in *Pugh v. Duke of Leeds*, Comp. 714, to be synonymous with the phrase “from the day of the date.” (*Kim v. Osgood’s Admr.*, 19 Mo. 60; *Oatman v. Walker*, 33 Me. 67; *Bigelow v. Willson*, 18 Mass. 485.)

The *day of the date* in this particular case is the *16th*, because “*date*” means the same in its legal as in its ordinary sense and imports the day of the month, the month and the year. (*Heffner v. Heffner*, 48 La. Ann. 1088.)

A “day,” in legal consideration, constitutes twenty-four hours, extending from midnight to midnight. (*Muckenfuss v. State*, 55 Te. Cr. R. 229, 116 S.W. 51, 20 L.R.A.n.s. 783, 131 Am. St. Rep. 813, 16 Ann. Cas. 768; *State v. Richardson*, 16 N.D. 1, 109 N.W. 1026; *Cheek v. Preston*, 34 Ind. App. 343, 72 N.E. 1048; 2 Words and Phrases, 1834.)

And fractions of a day in statutes or legal proceedings are not generally considered. (*Towell v. Hollweg*, 81 Ind. 154; *Brainard v. Bushnell*, 11 Conn. 16; *Cummings v. Holmes*, 11 Ill. App. 158; *Inhabitants v. Inhabitants*, 62 Mass. 371.)

The word “from,” in speaking of time from a certain day, generally excludes the day to which it relates. (*People v. Hornbeck*, 61 N.Y. Supp. 978, 30 Misc. Rep. 212; *Bigelow v. Willson*, 18 Mass. 485; *Peables v. Hannafoid*, 18 Mass. 106; *Kendall v. Kingsley*, 120 Mass. 94; *Rand v. Rand*, 4 N.H. 267.)

In view of the foregoing, it is our opinion that the initiative prohibition measure will become a law and take effect at 12:01 o’clock a.m., December 17, 1918.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

BY WM. McKNIGHT, *Deputy*.

244. Prohibition—License—Refund—Initiative Prohibition Law.

A license may recover back the unearned license fee where the license has been revoked wholly by reason of change in governmental policy by the State, and where there is no fault on the part of the licensee.

The initiative prohibition law takes effect at 12:01 a.m., December 17, 1918.

Counties and municipalities should make refund for the unearned portion of each license after the taking effect of the law upon presentation of proper bills.

CARSON CITY, November 26, 1918.

HON. G.J. KENNY, *District Attorney, Fallon, Nevada*.

DEAR SIR: Your recent letter relative to the initiative prohibition measure duly received. The questions therein asked will be taken up and answered in their order, as follows:

1. Is any refund legally due and payable to the holder of a liquor license, state and county, as a consequence of the “dry” initiative measure being successful at the recent election?

Although there are some decisions to the contrary, principally among which might be mentioned *Fitzgerald v. Witchard*, 130 Ga. 552, 16 S.E. 227, 16 L.R.A.n.s. 519, and *Peyton v. Hot Spring County*, 53 Ark. 236, 13 S.W. 764, the great weight of authority is to the effect that a licensee may recover back the unearned portion of the license fee where the license has been revoked wholly by reason of a change in governmental policy by the State, and where there is no fault on the part of the licensee. (*Pearson v. Seattle*, 14 Wash. 438, 44 Pac. 884; *Martel v. East St. Louis*, 94 Ill. 67; *Hirn v. State*, 1 Ohio St. 15; *Sharp v. Cartage*, 48 Mo. App. 26; *Marshall v. Snediker*, 25 Tex. 460, 78 Am. Dec. 534; *Auburn v. Mayer*, 58 Neb. 161, 76 N.W. 462; *Allsman v. Oklahoma City*, 21 Okl. 142, 95 Pac. 468, 16 L.R.A.n.s. 511, 17 Ann. Cas. 184.)

In our opinion, therefore, each of the various license holders will be entitled, when his license become void by reason of the taking effect of the initiative prohibition law, to a refund for the unearned portion of such license.