

**INDIANA ALCOHOLIC BEVERAGES COMMISSION: Sale
of contraband liquor.**

December 26, 1944.

Opinion No. 108

Hon. Bernard L. Doyle, Chairman
Indiana Alcoholic Beverages Commission,
Illinois Building,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your request that an official opinion issue in response to the following inquiry:

“The Alcoholic Beverages Act provides (Section 12-711, Volume 4, Burns’ Indiana Statutes 1942 Replacement) that the excise administrator shall sell all contraband property. In spite of this statute, however, we have had some little difficulty with local police departments who are seizing and selling contraband liquor and other property under Section 48-6402, Volume 9, Burns’ Indiana Statutes 1933.

“Will you please give us an official opinion as to which statute takes precedence.”

Section 12-711, Burns’ Indiana Statutes (Acts 1937, Ch. 197, Sec. 10), reads as follows:

“When any conveyance of any kind, any alcoholic beverages, malt articles, vessels, utensils, apparatus, stills or fixtures are seized under authority of this act, the proper court shall, upon conviction of the owner thereof, after opportunity has been given to such owner for a hearing relative thereto, order such of the articles as the court shall determine to have been possessed, kept or used in violation of any of the provisions of this act, to be sold by the excise administrator, if such articles have a commercial value and may be purchased and used legally, and if such articles have no commercial value or cannot be purchased and used legally, said excise administrator or the sheriff shall be ordered to destroy the same.

“Upon conviction of any person found in charge or possession of any such conveyance or articles so seized,

other than the owner thereof, or upon written petition of the excise administrator in case no person is found in charge of or in possession of any such conveyance or articles so seized, and after opportunity for hearing shall have been given by not less than ten (10) days' notice to the owner, if he be known, or if the owner be not known, then by notice of the seizure of said conveyance or articles, with a description thereof, shall be given by publication one (1) time in a newspaper of general distribution, published in the county seat of the county of the court having jurisdiction, or if there be no newspaper published in said county seat, then in a newspaper having circulation in said county, not less than ten (10) days prior to the time fixed for the hearing, and, upon hearing, if the court find that any such article was possessed, kept or used in violation of any of the provisions of this act, with the knowledge of the owner, said court shall order sale or disposition thereof as above provided.

“By intervention at such hearing, or in other proceedings brought for that purpose at any time before the sale of any property ordered sold as herein provided, lien-holders may have their liens determined, and their priorities fixed, and liens so determined shall be transferred to and attached to the proceeds of the sale of the property.

“All such articles ordered sold by any court shall be sold by the excise administrator at public auction in any county in which he may deem it most advantageous to sell the same, after one (1) week's notice of sale by publication in a newspaper of general circulation, published in the county seat of the county in which said sale shall be made. Sales of any such articles which have a commercial value and which may be lawfully purchased, may be sold to any person, firm or corporation lawfully entitled to buy the same and the proceeds of such sale, after deducting necessary costs and charges, including fees for publication, and payment of liens, shall be paid over by the said excise administrator as by this act is provided for the payment of taxes and license fees.”

Section 48-6402, Burns' Indiana Statutes Supplement 1933 (Acts 1941, Ch. 188, Sec. 2), which is known as the Police Pension Fund Act, insofar as same applies to the question asked, reads as follows:

"Such board of trustees shall have full charge and control of the police pension fund of such city, which shall be derived from the following sources:

"* * * Also, the proceeds from the sale of all lost, stolen, strayed and confiscated property recovered or taken into possession by members of such police force in the performance of their duties, and sold at public sale in accordance with law.

"* * *"

Section 12-711, *supra* (Acts 1935, ch. 226, Sec. 39, p. 1056, 1937, ch. 197, Sec. 10, p. 931), is a section of the Act entitled: "An Act concerning alcohol and alcoholic beverages, liquids, and substances, and to promote temperance, repealing laws and parts of laws, and declaring an emergency," dealing exclusively with the subject of alcoholic beverages, and is special in nature insofar as the procedure to follow in the sale and destruction of contraband alcoholic beverages are concerned; whereas, Section 48-6402 refers to the proceeds from the sales of confiscated property generally. Section 12-711 is therefore a special enactment applying to contraband property used in violation of any of the provisions of the alcoholic beverages law, and Section 48-6402 is a general law applying to all contraband property. It is the law that general statutes must give way to special statutes upon the same subject matter.

Daly et al. v. Carr et al., 206 Ind. 554, 190 N. E. 429 at 612;

Kingan and Co., Ltd. v. Ossam, 190 Ind. 554, 131 N. E. 81.

It is my opinion that the procedure outlined in Section 12-711, Burns' Indiana Statutes, *supra*, should be followed in the sale, disposal, and destruction in all contraband property described in the Alcoholic Beverages Act as above quoted.