

A Monopoly By Any Other Name

By: Jason Kay, Senior Staff Attorney, North Carolina Institute for Constitutional Law

Recently, the state liquor monopoly has come under scrutiny. Local ABC officials are earning enormous salaries. Lavish gifts and dinners are laid at the feet of those who hold the keys to the state liquor cabinet. Governor Perdue has asked a private company to appraise the total value of the State liquor monopoly – its government-owned and government-run stores, its influence over liquor product and pricing decisions, its close control of spirituous liquor sales – to determine how much money the State could earn if it sold its monopoly to private businesses.

But in all the fuss and bother over the problems with the ABC monopoly system, a single and powerful constitutional phrase has been strangely ignored. Before I repeat that phrase, I want to stress that these are not my words, they are our words. They may not be your personal words, but they are the words of the State Constitution duly enacted by the voters of North Carolina.

Those words are these: “monopolies are contrary to the genius of a free state and shall not be allowed.” That is a direct quote from Article I, section 34 of the present-day North Carolina Constitution.

You may be thinking, “surely those words can’t mean what they say.” Aye, but they do.

As in the “aye” vote our state legislators cast in 1937 to form the state liquor monopoly. As in the “aye” vote our legislative representatives cast to approve this provision as contained in each of the three major Constitutions of North Carolina in 1776, 1868 and 1970.

While our anti-monopoly provision has now seen its fourth century, it seems our state legislatures are still not above self-contradiction. The real question is which “aye” vote will resolve the conflict: the monopoly statute vote or the anti-monopoly constitutional vote.

In 1933, when the 21st Amendment to the U.S. Constitution ended the Noble Experiment of our nation’s prohibition era, the federal government got out of the alcohol regulation business. Instead, regulation became an exclusively state matter.

And North Carolina – the state that had passed statewide prohibition more than a decade before national prohibition and which never ratified the 21st Amendment – decided to do just that. It imposed the ABC monopoly system which remains largely intact today.

But the 21st Amendment did not give states unlimited power to regulate liquor within their borders. States do not have unlimited power. The only unlimited state power in a constitutional system belongs to the people.

As our state Constitution recognizes, “all political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.”

In other words, our state legislature is not free to violate our state Constitution. And that Constitution says without condition or limitation that monopolies are contrary to the genius of a free state. There is not a greater level of genius resident in the halls of the General Assembly that transforms government-run monopolies into a good idea.

Until we amend our constitution, the judgment of North Carolina citizens stands. A monopoly isn't just a bad idea; it is unconstitutional.

All the symptoms of the ill ABC system we have been reading about in the papers lately are just that: symptoms. Part, if not most, of the underlying illness stems from the liquor monopoly itself. Which is, as our Constitution says, contrary to the genius of a free state.