

MEMORANDUM

OFFICE OF THE ATTORNEY GENERAL

TO: Rep. Helen Head, Chair, Committee on General, Housing and Military Affairs

FROM: Jacob Humbert, Assistant Attorney General 

DATE: January 31, 2017

RE: Title 7 Revision Bill; Search and Seizure Issues

As requested, I am writing to summarize my testimony late last week related to warrantless search and seizure provisions in the Title 7 Revision Bill, §§ 80 and 87.

Section 80 does not raise concerns under the Fourth Amendment to the United States Constitution, or Chapter I, Article 11 of the Vermont Constitution, because “there is no invasion of privacy— and therefore no search— when government observes that which is willingly exposed to the public.” *State v. Bryant*, 2008 VT 39, ¶ 13. Section 80 is limited to searches of “any kind of public place for selling refreshments” located at or near a public event.¹ In those circumstances, the seller would be opening its place to the public, without any legitimate expectation of privacy, meaning warrantless administrative searches would be appropriate.

In contrast, Section 87 raises significant concerns because it would allow for warrantless searches and seizures of possessions and areas, over which the owner holds a legitimate expectation of privacy, based only on an officer’s reasonable belief that the owner is engaged in unlawful smuggling, delivery or transport of alcoholic beverages.² *See, e.g., State v. Birchard*, 2010 VT 57, ¶ 12 (Under Article 11, warrantless search of automobile impermissible absent probable cause and exigent circumstances); *State v. Savva*, 159 Vt. 75, 91, 616 A.2d 774, 783 (1991) (warrantless search of closed paper bags in car’s hatchback impermissible under Article 11). Such warrantless searches and seizures would violate Article 11.

Thank you.

¹ Section 80 proposes to amend existing 7 V.S.A. § 564 to read: “A sheriff, deputy sheriff, constable, police officer, selectboard member, or grand juror who has information that ~~malt, vinous, and spirituous liquor~~ alcoholic beverages or alcohol is kept with intent to sell, or is sold contrary to law in a ~~tent, shanty, hut, or place of any kind for selling refreshments in a~~ any kind of public place for selling refreshments, except ~~a dwelling houses~~ house, on or near the ~~ground grounds~~ of a ~~cattle show, agricultural exhibition, military muster, or public occasion of any kind~~, shall search ~~such~~ the suspected place without a warrant.”

² Section 87 proposes to amend existing 7 V.S.A. § 571 in relevant part to read: “If a sheriff, deputy sheriff, constable, police officer, the Commissioner of Liquor Control ~~or, an inspector~~ investigator duly acting for the Liquor Control Board, or State Police ~~has reason to believe and does believe,~~ officer reasonably believes that a person is engaged in the act of unlawfully smuggling, delivering, or transporting, ~~in violation of law,~~ malt or vinous beverages, spirits, fortified wines, alcoholic beverages or alcohol in any wagon, ~~buggy, automobile, motor vehicle,~~ air or water craft, or other ~~vehicle~~ conveyance, he or she shall search for and seize without warrant, ~~malt or vinous beverages, spirits, fortified wines,~~ any alcoholic beverages or alcohol found therein in the vehicle, air or water craft, or other conveyance being smuggled, delivered, or transported contrary to law.”