

2990.

LIQUOR—FINES IMPOSED FOR VIOLATION OF SECTION 6064-54 SHOULD BE DISTRIBUTED AS PROVIDED BY SECTION 6064-59, G. C.

SYLLABUS:

Money arising from fines paid by persons convicted of possessing beer or intoxicating liquor for the purpose of sale in violation of section 6064-54, General Code, should be distributed as provided by section 6064-59, General Code.

COLUMBUS, OHIO, August 3, 1934.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads:

“The other day we had two convictions under the new liquor law for possession of liquor for purposes of sale without having any permit whatever.

Section 6064-59 provides—‘Monies arising from fines and forfeited bonds collected under any of the penal laws of this state relating to the manufacture, transportation, distribution or sale of beer or intoxicating liquor, shall be paid one-half into the state treasury to the credit of the general revenue fund therein, and one-half into the treasury of the county wherein the person is held.’

Where several fines are collected and on hand for a violation of possessing liquor for sale without a permit, is the above statute broad enough to make the distribution as therein mentioned?

We question as to whether or not a fine assessed under the charge of possession as above mentioned may be distributed under the above Section, and we cannot find any Section which definitely says how a possession fine may be distributed.

We will appreciate your opinion.”

The persons who were convicted of having intoxicating liquor in their possession for sale were no doubt charged with violating section 6064-54, General Code, which reads in part:

“Whoever, not being the holder of a class A permit issued by the department of liquor control, in force at the time, and authorizing the manufacture thereof, or an agent or employee of the department of liquor control authorized by law and by said department to manufacture such beer or intoxicating liquor, either directly or indirectly, himself or by his clerk, agent, or employee, manufactures any beer or intoxicating liquor for sale; or

Whoever, not being the holder of a class B, class C, class D, class E, class F, or class G permit issued by the department of liquor control, in force at the time, and authorizing the sale thereof, or an agent or employee of the department of liquor control or the tax commission of Ohio authorized by law and by said department or commission to sell

such beer or intoxicating liquor, either directly or indirect'y, himself or by his clerk, agent, or employee, sells, keeps or has in possession for sale any beer or intoxicating liquor, or sells any alcohol at retail, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than thirty days nor more than six months, or both."

The provisions of section 6064-59, General Code, quoted in your letter, relating to the distribution of money arising from fines collected upon the convictions of persons who are charged with violating the laws of this state regulating and controlling the sale and distribution of beer and intoxicating liquor, cannot be construed as evincing an intention on the part of the legislature to enumerate only the particular offenses for which the distribution of the fines could be made. In other words, the provisions of section 6064-59, General Code, were not intended to particularize the offenses for which distribution should be made of moneys collected as a result of violations of the penal laws of this state regulating the sale and distribution of beer and intoxicating liquor. The language contained in that section must be deemed as referring in a general way to all of the laws of this state which relate to the sale and distribution of beer and intoxicating liquor, the violation of which is subject to a fine. This conclusion finds support in section 6064-53, General Code, wherein the word "sale" is defined as follows:

"'Sale' and 'sell' include exchange, barter, gift, offer for sale, distribution and delivery of any kind."

In view of the definition of the word "sale", it would have been unnecessary for the legislature to have included the word "distribution" in section 6064-59, General Code, inasmuch as the word "sale", as defined in section 6064-53, General Code, includes "distribution".

That the language contained in section 6064-59, General Code, refers in general to all the provisions of the General Code regulating the sale and distribution of beer and intoxicating liquor in Ohio is further supported by the provisions of section 6064-8, General Code, which reads in part:

"To enforce the provisions of this act and the rules, regulations, and orders of the board of liquor control *and the penal laws of this state relating to the manufacture, importation, transportation, distribution, and sale of beer and intoxicating liquors.* The attorney general, any prosecuting attorney, and any prosecuting officer of a municipal corporation or a police or municipal court, shall at the request of the department prosecute any person charged with the violation of any of the penal provisions of this act or of any section of the General Code *relating to the manufacture, importation, transportation, distribution and sale of beer and intoxicating liquor.*" (Italics the writer's.)

That construction of section 6064-59, General Code, is further warranted by the fact that it is the manufacture for sale without a permit that can be penalized and not the mere manufacturing of beer or intoxicating liquor. Thus, if the provisions of section 6064-59, General Code, were to be construed as enumer-

ating the offenses for which distribution may be made as provided therein, it would result in excluding from the provisions of that section moneys resulting from convictions obtained for manufacturing beer or intoxicating liquor for the purpose of sale, in violation of section 6064-54, General Code. It seems to me that the legislature, by enacting section 6064-59, General Code, did not intend to exclude the distribution of money arising from fines obtained from persons found guilty of violating the provisions of section 6064-54, General Code, in respect to the manufacture or possession of beer or intoxicating liquor without a permit so to do. Undoubtedly, a law penalizing the "possession for sale" of beer or intoxicating liquor is a penal law "relating to * * the * * distribution or sale of beer or intoxicating liquor".

It is therefore my opinion that money arising from fines paid by persons convicted of possessing beer or intoxicating liquor for the purpose of sale in violation of section 6064-54, General Code, should be distributed as provided by section 6064-59, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2991.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND AUGUST ANDERSEN OF RAVENNA, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF A CONTRACT FOR PLUMBING FOR A PROJECT KNOWN AS GARAGE, DEPARTMENT OF HIGHWAYS, DIVISION NO. 4.

COLUMBUS, OHIO, August 3, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Highways, and August Andersen, of Ravenna, Ohio. This contract covers the construction and completion of contract for plumbing for a project known as Garage, Department of Highways, Division No. 4, Ravenna, Ohio, in accordance with Item No. 2 and Item No. 7 of the form of proposal dated June 24, 1934. Said contract calls for an expenditure of one thousand five hundred and seventy-five dollars (\$1,575.00).

You have submitted the certificate of the Director of Finance, to the effect that there are unencumbered balances legally appropriated, in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board, showing that said board has released funds for this project, in accordance with section 8 of House Bill No. 699 of the 90th General Assembly, regular session.

In addition, you have submitted a contract bond upon which the United States Fidelity and Guaranty Company, of Baltimore, Maryland, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly