

1450.

APPROVAL—BOND OF ROY H. SMITH IN THE AMOUNT OF \$30,000.00 AS TREASURER OF KENT STATE UNIVERSITY, KENT, OHIO.

COLUMBUS, OHIO, November 10, 1937.

KENT STATE UNIVERSITY, *Kent, Ohio.*

GENTLEMEN :

*Attention: Secretary, Board of Trustees.*

You have submitted for my approval the bond of Roy H. Smith in the amount of \$30,000.00 on the State form of bond covering Mr. Smith as Treasurer to the Trustees of Kent State University, Kent, Ohio, for an indefinite term, with the Standard Accident Insurance Company of Detroit, Michigan, as surety.

Attached to the Bond is the Power of Attorney for Roy H. Smith, Jr., Attorney-in-fact for the Standard Accident Insurance Company.

You have also submitted a certified copy of the Resolution of the Board of Trustees of Kent University appointing Roy H. Smith as Treasurer of the Board of Trustees, under date of September 16, 1935.

You have also submitted certified copy of Resolution of the Board of Trustees under date of October 19, 1937, approving the bond in question.

Finding said bond and resolutions in proper legal form, I have this day noted my approval thereon and return the same herewith to you.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

1451.

DEPARTMENT OF LIQUOR CONTROL MAY REQUIRE "CONSENT" TO TRANSPORT LIQUOR, WHEN—INTRA-STATE TRANSPORTATION—PERMITS AND QUALIFICATIONS.

SYLLABUS:

1. *The Department of Liquor Control may require persons qualified to import alcohol to obtain "consents" from the Department before so*

doing, but the Department may not require the obtaining of such "consents" for the intrastate transportation of alcohol.

2. Applicants for permits under the Liquor Control Act, Sections 6064-1, et seq., General Code, must qualify on the basis of operations within the State of Ohio and therefore an applicant who does not conduct manufacturing operations within the State of Ohio cannot qualify for an A-3 permit.

COLUMBUS, OHIO, November 12, 1937.

HON. J. W. MILLER, *Director, Department of Liquor Control, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"The Department of Liquor Control respectfully requests your opinion on the following questions:

May the Department of Liquor Control require that consents be procured for transporting alcohol to be used for medicinal and industrial purposes?

Does the A-3 permit apply only to Ohio manufacturers?"

"Alcohol" is defined in Section 6064-1, General Code, as: "the term 'alcohol' means ethyl alcohol, whether rectified or diluted with water or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol; but such term excludes denatured alcohol and wood alcohol" and I assume that is the sense in which you use the word, for it is evident from the definition that denatured alcohol and wood alcohol were not meant to be included within the scope of the Liquor Control Act. Therefore this opinion will only apply to "alcohol" as defined in Section 6064-1, supra.

"Transportation" for the purpose of this discussion must be classified into (1) transportation into the State of Ohio and (2) intrastate transportation. There are two classes of permittees who have the right to import alcohol, namely, A-3 and (I). The authorizations are found in Section 6064-15, General Code, the pertinent parts of which read as follows:

"Permit A-3: A permit to a manufacturer to manufacture alcohol and spirituous liquor and sell such product to the department of liquor control or to the holders of a like permit or to the holders of A-4 permits for blending or manufacturing purposes; and to import alcohol into this state upon such terms and conditions as may be prescribed by the department of liquor control, \* \* \*."

“Permit I: A permit to wholesale druggists to import alcohol into Ohio subject to such terms and conditions as may be imposed by the department of liquor control, \* \* \*.”

You will notice that the right to import alcohol is not unqualified but is subject in both permits to “such terms and conditions as may be imposed by the Department of Liquor Control.” Clearly then, your Department has authority to regulate such importations so long as such regulations are not unreasonable, arbitrary or discriminatory. A requirement that the consent of the Department must first be obtained in order to import would not, in my opinion, be an unreasonable, arbitrary or discriminatory condition, if compliance with such departmental regulation would assist the Enforcement Division of your Department in policing the liquor traffic. I find that the above conclusion is further supported by Regulation No. 28 of the Board of Liquor Control which in part provides:

“\* \* \* \* \* \* \* \* \* \* \* \* \* \* \*”

No railroad, express company, common carrier, contract carrier, or other carrier of merchandise, whether for compensation or otherwise, shall knowingly accept for shipment from a point outside this state, any beer or intoxicating liquor, consigned to any place or person located in this state, unless the consignor or consignee of such shipment shall have first obtained from the Department of Liquor Control a permit authorizing such shipment, and shall have presented a true copy thereof to the proposed carrier of such shipment.

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \*”

This regulation, it is true, is only concerned with the activities of the carriers, but it clearly indicates a recognition by the Board that it is desirable that importers be required to obtain “consents”.

The intrastate transportation of alcohol presents a different problem, for there is nothing in the Liquor Control Act or any other statute in Ohio which expressly or impliedly gives the Department the power to require the obtaining of consents for this class of transportation (assuming of course, that the actual drayage is performed by a person who has the right under the terms of the Liquor Control Act to transport alcohol).

You also inquire whether the A-3 permit may only be issued to Ohio manufacturers. The pertinent part of the description of an A-3 permit found in Section 6064-15, General Code, is as follows:

“Permit A-3: A permit to a manufacturer \* \* \* .  
\* \* \* \* \* \* \* \*

The fee for this permit shall be one thousand dollars for each plant; but in case of a plant whose production capacity is less than five hundred wine barrels of fifty gallons each, annually, the fee shall be at the rate of two dollars per barrel.”

The reference in the last paragraph in my opinion is to plants located in the State of Ohio. It certainly could not be successfully maintained that an A-3 permittee could be required to pay One Thousand Dollars for each plant outside of Ohio, for such an interpretation would give the section an extra-territorial effect, and that is to be avoided. 37 O. J. 807.

Further support for this interpretation may be obtained by considering the description of some of the other permits. For instance, the C-1 permit which is described in Section 6064-15 as “a permit to the owner or operator of a retail store to sell \* \* \* .” (In this respect the descriptions of C-1, C-2 and C-2a permits are alike). Certainly an operator of a retail store in Kentucky or Indiana could not qualify and thus operate out of Ohio without having a retail store here.

Consider also a D-5 permit which is described as “a permit to the owner or operator of a night club, etc.” It is quite apparent that only the owners or operators of night clubs in Ohio could qualify. From a consideration of the descriptions of the various permits it is quite manifest that the legislature intended that the applicant be qualified on the basis of operations in the State of Ohio.

In conclusion, therefore, it is my opinion that:

1. The Department of Liquor Control may require persons qualified to import alcohol to obtain “consents” from the Department before so doing, but the Department may not require the obtaining of such “consents” for the intrastate transportation of alcohol.
2. Only manufacturers who are conducting manufacturing operations within the State of Ohio may obtain an A-3 permit.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*