

816.

BEER—CLASS D PERMITTEE UNAUTHORIZED TO EXERCISE PRIVILEGE GRANTED BY CLASS C PERMIT TO SELL BEER AT RETAIL FOR CONSUMPTION OFF PREMISES WHERE SOLD—MAY SECURE AND HOLD AT SAME TIME CLASS D AND CLASS C PERMIT WHEN OWNER OR OPERATOR OF RETAIL STORE.

SYLLABUS:

1. *A holder of a class D permit under section 11 of the Ackerman-Lawrence Bill cannot exercise the privilege granted by a class C permit to sell beer at retail for consumption off the premises where sold.*

2. *A holder of a class D permit can secure and hold at the same time a class C permit, provided such person is either the owner or operator of a retail store as required by section 11 of Amended Substitute Senate Bill No. 346.*

COLUMBUS, OHIO, May 11, 1933.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date wherein you request my opinion concerning section 11 of the recently enacted Ackerman-Lawrence Bill. Your letter reads in part as follows:

“1. As to permit D, does the holder have the right and privileges included in permit C, or is permit D absolutely exclusive and only permits the sale of beer for consumption on the premises, without the right to sell beer as set forth in permit C, for consumption not on the premises where sold.

2. If permit D does not give the privilege for sale to be consumed off the premises, may a holder of permit D also apply for and obtain permit C, while he is holding and operating under permit D.”

Section 11 of Amended Substitute Senate Bill No. 346 is dispositive of your inquiry and reads in part as follows:

“The commission shall formulate rules and regulations with reference to applications for, and the issuance of, permits and may issue the following permits:

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Permit C: A permit to the owner or operator of a retail store to sell beer in bottles only, and not for consumption on the premises where sold, in original packages containing not less than six (6) bottles of not more than twelve (12) fluid ounces each, and in total quantities at each sale of not more than forty-eight (48) bottles of twelve (12) fluid ounces each. The permit fee shall be fifty dollars (\$50.00) per year for each location. The commission may formulate and enforce rules and regulations with reference to the time and manner of sale by holders of Class C permits.

Permit D: A permit to the owner or operator of a hotel, restaurant, club or amusement park to sell beer at retail either in glass or

bottle for consumption on the premises where sold and at tables only. The permit fee shall be one hundred dollars (\$100.00) per year for each location. The commission may formulate and enforce rules and regulations with reference to the time and manner of sale by such permit holders and with reference to the location of, furnishing of, and access to, the place of sale. The commission may also require from the permit holder detailed information under oath before or after issuing the permit, as to the character of business conducted, the financial responsibility and record of the applicant or permit holder and the name or names of any person, firm or corporation other than the named applicant or permit holder having any financial interest in said application or permit. The commission shall adopt and promulgate rules and regulations which shall require that public decency, sobriety, and good order shall at all times be observed in any place licensed under permit D, and shall promptly rescind the permit for any location where these rules and regulations are not strictly observed."

By the terms of a class D permit, the holder thereof is authorized only to "sell beer at retail either in glass or bottle for consumption on the premises where sold and at tables only." The legislature having expressly limited the scope and extent of a class D permit to the sale of beer to be consumed at tables on the premises of hotels, restaurants, clubs and amusement parks, the holder of such a permit cannot sell beer in any other way or manner. This conclusion finds further support in view of the fact that the legislature has limited the sale of beer in bottles at retail for consumption off the premises to holders of class C permits only. Incidentally, a class D permit can issue only to the owner or operator of a hotel, restaurant, club or amusement park, whereas a class C permit can issue only to the owner or operator of a retail store. In view of the fact that the legislature has seen fit to divide the sale of beer at retail in Ohio into two categories with each limited in scope and extent and requiring a different and separate type of permit for each class of business, your first question must be answered in the negative.

There is no inhibition in section 11 of the aforesaid act which would prevent a holder of a class D permit from securing and holding at the same time a class C permit, provided such person can qualify as either the owner or operator of both a hotel, restaurant, club or amusement park and a retail store, as required by that section for persons desiring class C or class D permits.

Specifically answering your inquiry, I am of the opinion that:

1. A holder of a class D permit under section 11 of the Ackerman-Lawrence Bill cannot exercise the privilege granted by a class C permit to sell beer at retail for consumption off the premises where sold.

2. A holder of a class D permit can secure and hold at the same time a class C permit, provided such person is either the owner or operator of a retail store as required by section 11 of Amended Substitute Bill No. 346.

Respectfully,

JOHN W. BRICKER,

Attorney General.