

5769.

LIQUOR CONTROL—BOARD OF MAY NOT INVESTIGATE
ADMINISTRATION OF DEPARTMENT OF LIQUOR CON-
TROL OR OF ITS DIRECTOR.

SYLLABUS:

Under the provisions of the Liquor Control Act the Board of Liquor Control does not have the power to conduct an investigation of the administration of the Department of Liquor Control by the Director or his employes, nor does the Board of Liquor Control have the authority to conduct an investigation with reference to the activities of persons who are not the holders of permits issued by the Department of Liquor Control. Likewise, the Board of Liquor Control does not have authority to exercise its power of subpoenaing witnesses in such cases in view of the fact that the Board of Liquor Control does not have the authority to conduct such investigations.

COLUMBUS, OHIO, June 29, 1936.

HON. GEORGE E. EPPLEY, *Chairman, Board of Liquor Control, Department of Liquor Control, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter which reads in part as follows:

“1. Under the Liquor Control Act has the Board of Liquor Control authority to conduct an investigation of the administration of the affairs of the Department of Liquor Control?

2. Has the Board authority to conduct an investigation of the conduct of the Director of the Department of Liquor Control, and the conduct of persons not officially connected with the Department but doing business therewith?

3. In the conduct of an investigation such as mentioned in the two previous questions, has the Board the power to subpoena witnesses, take testimony under oath, and make a record of the testimony of such witnesses?”

Section 6064-3, General Code, is pertinent to your inquiry and reads in part:

“The board of liquor control shall have power:

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3. To consider, hear and determine all appeals authorized by this act to be taken from any decision, determination or order

of the department, and all complaints for the revocation of permits. The board shall accord a hearing to any person so appealing, or complained against, in which such person shall have the right to be present, to be represented by counsel, to offer evidence, and to require the attendance of witnesses. In any such case, the decision of the board, made after such hearing, shall be final.

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5. To consider and make recommendations upon any matter which the director may submit to it for recommendation and to pass upon and determine any matter which he shall submit to it for determination.

6. To require of the director and of any officer, department, board, or commission of the state government or of any county, township, or municipal officer in this state, information with respect to the social and economic effects of this act; and all such officers, departments, boards, and commissions are hereby required to furnish such information when requested in writing by the board.

7. To submit to the governor amendments to this act or any other act affecting the sale of intoxicating liquor in this state when it deems desirable.

8. For the purpose of any hearing or investigation which they are respectively authorized or required by this act to conduct, the board or the director or any agent of the department designated in writing for that purpose, shall have power to administer oaths, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, the director, or such agent, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the common pleas judge of the county in which the person resides, on application of any member of the board, or the director, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Each officer who serves such subpoena shall receive the same fees as a sheriff and each witness who appears, in obedience to a subpoena, before the board, or a member, or the director, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid in the same manner as other expenses are audited and paid, upon the pres-

entation of proper vouchers, approved by any two members of the board. No witness subpoenaed at the instance of a party other than the board, or one of its members, or the director, or such agent shall be entitled to compensation unless the board shall certify that his testimony was material to the matter investigated.

The foregoing enumeration of powers of the board of liquor control shall not derogate from or prejudice any other power expressly or impliedly granted to the board by any other provision of this act; but excepting as herein expressly provided, the board shall not have or exercise executive or administrative duties or powers."

Section 6064-25, General Code, is also pertinent and reads:

"The board of liquor control may revoke any permit issued pursuant to the liquor control act for violation of any of the applicable restrictions of this act or of any lawful rule or regulation of the board or other sufficient cause, and must revoke any such permit for any of the following causes:

1. In case of conviction of the holder or his agent or employee for violating any of the penal provisions of this act or for a felony.
2. For making any false material statement in an application for a permit.
3. For assigning, transferring or pledging a permit contrary to the rules and regulations of the board of liquor control adopted pursuant to this act.
4. For selling or promising to sell beer or intoxicating liquor to a wholesale or retail dealer who is not the holder of a proper permit at the time of the sale or promise.
5. For failure or default of the holder of a permit to pay an excise tax or any part thereof together with any penalties imposed by or under the provisions of the law relating thereto and for violation of any rule or regulation of the tax commission of Ohio in pursuance thereof.

The board of liquor control shall cancel any permit issued pursuant to the liquor control act:

1. When required to do so by the provisions of section 6064-37 of the General Code.

2. Excepting as otherwise provided in the rules and regulations of the board of liquor control relative to the transfer of permits, in the event of the death or bankruptcy of the holder thereof, the making of an assignment for the benefit of the creditors of the holder thereof, or the appointment of a receiver of the property of such holders.

Any person or his employee or agent who has been determined by a court having jurisdiction, to have violated section 12940 of the General Code of Ohio, or any part thereof, shall forthwith forfeit any permit granted to him. In addition to the board, such court shall have the power to order such forfeiture. Any place granted such permit by the department, shall be deemed a place of public accommodation, within the meaning of said section 12940. Application for another permit shall not be considered by the department under one year from date of said forfeiture."

Section 6064-26, General Code, provides:

"The board of liquor control may act in the revocation or cancellation of any permit on its own initiative or on complaint of the department or of any person, after a hearing at which the holder shall be given an opportunity to be heard in such manner and upon such notice as may be prescribed by the rules and regulations of the board of liquor control."

An examination of the sections cited and quoted discloses no provision whereby the Board of Liquor Control is authorized to conduct a hearing or an investigation of matters pertaining to the administration of the affairs of the Department of Liquor Control by the Director of Liquor Control or the employes of the Department. Section 6064-3, General Code, specifically provides that the Board may conduct hearings and investigations, but an examination of the other provisions of the Liquor Control Act discloses that the power to conduct hearings or investigations is limited to hearings on appeals on rejections of applications for permits by the Department of Liquor Control, and to hearings on the cancellation and revocation of permits instituted by the Department of Liquor Control or the Board itself. The Board in conducting hearings on rejections of applications for permits, as well as on hearings to revoke or cancel permits, is duly authorized to subpoena such persons and books as may be necessary for the purposes of such hearings.

Inasmuch as there is no provision in the Liquor Control Act which authorizes the Board of Liquor Control to conduct an investigation of

the administration of the Department of Liquor Control by the Director or his agents or employes, it necessarily follows that the provisions of Section 6064-3, General Code, which authorize the Board of Liquor Control to subpoena persons and books, could not be invoked by the Board for such purpose.

The same conclusion must be reached in respect to the power of the Board to subpoena persons or to conduct investigations with reference to persons not connected with the Department of Liquor Control and who are not the holders of permits issued by the Department of Liquor Control. That is to say, that the Board of Liquor Control does not have the authority to subpoena persons who are not permit holders to appear before the Board and conduct an investigation of the activities of such persons with reference to the Department of Liquor Control.

Concluding, it is my opinion that under the provisions of the Liquor Control Act the Board of Liquor Control does not have the power to conduct an investigation of the administration of the Department of Liquor Control by the Director or his employes, nor does the Board of Liquor Control have the authority to conduct an investigation with reference to the activities of persons who are not the holders of permits issued by the Department of Liquor Control. Likewise, the Board of Liquor Control does not have authority to exercise its power of subpoenaing witnesses in such cases in view of the fact that the Board of Liquor Control does not have the authority to conduct such investigations.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5770.

APPROVAL—BONDS OF INDEPENDENT RURAL SCHOOL
DISTRICT No. 2, JEFFERSON COUNTY, OHIO, \$15,500.00.

COLUMBUS, OHIO, June 30, 1936.

State Employes Retirement Board, Columbus, Ohio.

5771.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA
COUNTY, OHIO, \$12,000.00.

COLUMBUS, OHIO, June 30, 1936.

State Employes Retirement Board, Columbus, Ohio.