under the authority of which this lease is executed and with other sections of the General Code, relating to leases of this kind.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1007.

LIQUOR CONTROL COMMISSION—CANNOT REQUIRE CLASS C AND CLASS D PERMITTEES TO PURCHASE BEER ONLY FROM CLASS A AND CLASS B PERMITTEES—CANNOT PROHIBIT CLASSES A, B AND C PERMITTEES FROM DELIVERING BEER.

SYLLABUS:

1. *The Ohio Liquor Control Commission cannot promulgate a rule and regulation requiring class C and class D permittees to purchase beer only from class A and class B permittees.*

2. *The Ohio Liquor Control Commission, by a rule and regulation promulgated by that administrative body, cannot prohibit holders of class A, class B and class C permits from delivering beer nor can the Commission adopt a rule and regulation which allows only class C permittees who are grocers to deliver beer.*

COLUMBUS, OHIO, June 30, 1933.

HON L. L. FARIS, *Director, Ohio Liquor Control Commission, Columbus, Ohio.*

DEAR SIR:—This will aknowledge your letter of recent date which reads as follows:

> "The State Liquor Control Commission desires a ruling from you on two proposed regulations. The first provides, 'That holders of Permits C and D cannot purchase beer or beverages under this Act except through holders of A or B Permits. Said Permittees may purchase beer not obtainable in Ohio elsewhere upon being authorized to do so by the Director of this Commission'.
>
> The second proposal is 'Whether or not we have a right to prohibit all Permittees except those operating bona fide grocery stores from delivering beer; this regulation, however, shall not prevent Permittees from delivering beer upon prescription of a physician'."

Section 3 of Amended Substitute Senate Bill No. 346 is pertinent and dispositive of your first inquiry and reads as follows:

> "The commission shall have full power to control and regulate the manufacture, distribution and sale of alcoholic beverages of whatever alcoholic content may be permitted by law."

The Legislature has invested the Ohio Liquor Control Commission with authority to regulate and control the distribution and sale in Ohio of beer containing 3.2 per centum of alcohol. However, the power granted to the Ohio Liquor Control Commission is one which relates to the sale and distribution of beer to retailers and to ultimate consumers and not to persons who purchase beer for the purpose of selling it as retailers or dispensers. It will be observed that there is no provision in the act which empowers the Ohio Liquor Control Commission to regulate or control the purchase of beer by permittees. It is evidently the purpose of the Commission in promulgating the contemplated regulation on beer that is purchased outside of Ohio to prevent class C and class D permittees from evading the payment of the tax levied by section 6 of the aforesaid act, as well as to prevent such permittees from acting as distributors of beer imported from without Ohio without first procuring a class B permit as required by law. In other words, by means of the proposed regulation the Ohio Liquor Control Commission will be able to effectuate one of the primary purposes of the act, to wit, the raising of revenue for the support of the state and its political subdivisions. Although the purpose of the regulation is one going to the better enforcement of the act, I am unable to find any provision therein which authorizes the Ohio Liquor Control Commission to make such rule and regulation. In fact, the legislature has specifically recognized in that part of section 6 which reads:

> "The tax herein provided shall, as to beer made in Ohio, be paid by the manufacturer. The tax on beer made outside Ohio shall be paid by the original consignee within this state."

the right of permittees to purchase beer from without Ohio. See also section 7 of the Ackerman-Lawrence Bill.

Section 11 reads in part as follows:

> " * * * * * * * * *
>
> Permit A: A permit to a manufacturer of beer, of whatever alcoholic content may be legal, to manufacture and sell such product for home use and to retail and wholesale permit holders under such regulations as may be promulgated by the commission. * * *.
>
> Permit B: A permit to a wholesale distributor of beer to distribute or sell such product for home use and to C and D permit holders under such regulations as may be promulgated by the commission. * * *.
>
> 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 issuance of a class A or class B permit authorizes the holder thereof to sell beer for home use and consumption. The right to sell beer for home use by

such permittees necessarily implies that a class A or class B permittee would have the right to deliver such beverage to the home of a consumer, inasmuch as there is no language in section 11 which restricts such sales and deliveries to the plant or warehouse of a class A or class B permittee. There being language in the section which evinces an intention contrary to that contained in the proposed regulation of the Commission, it follows that the Ohio Liquor Control Commission cannot pass a regulation which would prohibit a class A or class B permittee from delivering beer. Similarly, a like prohibition as to class D permittees would not be applicable, because the holders of class D permits are only authorized under such permits to sell beer which is to be consumed on the premises of the permit holders and are not authorized to sell beer in any other manner. Opinion No. 816 of the Opinions of the Attorney General for 1933.

In view of the fact that the contemplated rule of the Commission is not applicable to class A, class B and class D permittees, it only remains to be determined whether the Commission can prohibit all class C permittees, except those who are grocers, from delivering beer. According to the provisions of section 11, a class C permit can be issued only to the owner or operator of a retail store. The phrase "retail store" is not expressly defined anywhere in the act, although the legislature has conferred upon the Ohio Liquor Control Commission in section 4 of the act the power to define the term "retail store". It is evident from your request for my opinion that the Commission has not defined the phrase "retail store" so as to include grocers only. A "retail store", as commonly understood, is one in which commodities are sold or vended in small quantities or parcels and includes all kinds and classes of businesses. It is apparent at once that the proposed rule of the Commission allowing only a certain group of class C permittees, to wit, grocers, to deliver beer and denying to other permittees of the same class the same right and privilege would be an unreasonable and arbitrary regulation, since it discriminates beween the owners and operators of groceries and the other enterprises or businesses that are included in the phrase "retail store" as used in section 11. Although it is a well settled rule of law that classification or discrimination is not prohibited in the enactment of legislation, yet, in order to be valid, the classification or discrimination must be one which does not exempt from its operation any like person or thing affected by it. In other words, a classification is not deemed arbitrary or unreasonable if all persons or things subject to its terms are treated alike under like circumstances and conditions. The rule of law in respect to classification in legislation is stated in the case of *Hayes* vs. *Missouri,* 120 U. S. 68. The first branch of the syllabus reads as follows:

> "The Fourteenth Amendment does not prohibit legislation which is limited in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

See also *Magoun* vs. *Illinois Trust and Savings Company,* 170 U. S. 283, 293, 296; *Heck* vs. *State,* 44 O. S. 536; 539; *Assur* vs. *the City of Cincinnati,* 88 O. S. 181, 186; *Dillon* vs. *City of Cleveland,* 117 O. S. 258, 272. Applying the principles of law laid down in the case of *Hayes* vs. *Missouri,* supra, to the proposed regulation of the Commission, I am of the opinion that the regulation allowing only class C permittees who are grocers to deliver beer would be unreasonable and arbitrary, since all persons holding class C permits are not treated alike by the proposed regulation.

In specific answer to your inquiries, I am of the opinion that:

1. The Ohio Liquor Control Commission cannot promulgate a rule and regulation requiring class C and class D permittees to purchase beer only from class A and class B permittees.

2. The Ohio Liquor Control Commission, by a rule and regulation promulgated by that administrative body, cannot prohibit holders of class A, class B and class C permits from delivering beer nor can the Commission adopt a rule and regulation which allows only class C permittees who are grocers to deliver beer.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1008.

DOG WARDEN—MAY CARRY CONCEALED WEAPON UPON GIVING BOND.

SYLLABUS:

A dog warden appointed in pursuance of law, being a specially appointed police officer within the meaning of section 12819, *General Code, may carry a concealed weapon upon giving a bond as required by that statute.*

COLUMBUS, OHIO, June 30, 1933.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge the receipt of a letter from your office over the signature of James B. Miller, Assistant Prosecuting Attorney, requesting my opinion as to whether a county dog warden can carry a concealed weapon.

Sections 5652-7 and 12819, General Code, are pertinent to your inquiry and read:

Sec. 5652-7.

"County Commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs.

Such county dog warden and deputies shall each give bond in a sum not less than five hundred dollars and not more than two thousand dollars conditioned for the faithful performance of their duties. Such bonds to be filed with the county auditor of their respective counties. Such county dog warden and deputies shall make a record of all dogs owned, kept and harbored in their respective counties. They shall patrol their respective counties, seize and impound on sight all dogs more than three months of age, found not wearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel. They shall also investigate all claims for damages to live stock inflicted by dogs. They shall make weekly reports, in writing, to the county commissioners of their