947.

DEPARTMENT LIQUOR CONTROL—SECTION 6064-17 G. C.—PERMITS: CLASS: D-3, D-4, D-5, INTERPRETATION AS TO ISSUANCE — TERRITORY — CORPORATE LIMITS, COUNTY, CITY, VILLAGE—POPULATION.

SYLLABUS:

Under the provisions of Section 6064-17 of the General Code, permits may be issued by the Department of Liquor Control on the following bases:

1. One class D-3, class D-4 and class D-5 permit may be issued for each two thousand population, or part thereof, in any village or city of a population of less than fifty-five thousand.

2. One class D-3 permit may be issued for each fifteen hundred population, or part thereof, in any city of a population of fifty-five thousand or more.

3. One class D-3, class D-4 and class D-5 permit may be issued for each two thousand population, or part thereof, in the territory lying without the corporate limits of cities or villages in any county.

COLUMBUS, OHIO, July 27, 1939.

HON. JACOB B. TAYLOR, *Director, Department of Liquor Control, Columbus, Ohio.*

DEAR SIR: This acknowledges receipt of your request for my opinion, which reads as follows:

> "Owing to the differences of opinion and of the interpretation of the section governing the distribution of permits according to quota since the inception of the Department of Liquor Control, we respectfully request your opinion as to the interpretation of Section 6064-17 of the Ohio General Code, and particularly of Paragraphs Nos. 3, 4 and 5 of said section.
>
> The following problem is self-explanatory as to the necessity of a formal opinion on this subject.
>
> Let us say that County A has a poulation over 94,000 which, as based on the quota, would give County A forty-eight permits of the restricted type. Now, let us assume that County A has eight incorporated cities and villages which consumes, on the basis of population, twenty-eight of the forty-eight. Further let us consider that besides the incorporated cities and villages there are twenty-two townships, which upon the basis of population, would be entitled to twenty-two permits, making a

total of fifty. If figured upon the county population, two townships are deprived of permits, and if figured upon the basis of township population, two more permits would be issued than the statute provides.

Further, let us consider the point that if the quota is determined by the county population, irrespective of townships in the above case, the remaining permits, after the incorporated cities and villages have been alloted, might all be placed in one township and this will not make the distribution county wide."

The restrictions on the issuance of permits by the Department of Liquor Control are contained in Section 6064-17 of the General Code which, in so far as the same is pertinent to the question herein presented, reads as follows:

"Not more than one class D-3, class D-4 or class D-5 permit shall be issued for each two thousand population, or part thereof, in any county, city or village, excepting that in any city of a population of fifty-five thousand or more, one class D-3 permit may be issued for each fifteen hundred population, or part thereof."

It will be noted that no provisions are contained in the foregoing with respect to the issuance of permits on the township basis. The subdivisions provided for therein and to be considered are cities, villages and counties. With respect to cities and villages, with the exception of cities having a population of fifty-five thousand or more, in which one class D-3 permit may be issued for each fifteen hundred population or part thereof, it is apparent from the language above that permits may be issued on the basis of one permit for each two thousand population, or part thereof.

The statute, however, likewise provides that "not more than one * * * permit shall be issued for each two thousand population, or part thereof, in any county".

From the above it is at once apparent that if the number of permits which may be issued in any one county is in every instance to be limited to one for each two thousand population, or part thereof, within such county, without any regard to the number of cities or villages in such county, then, in many instances, cities or villages within such county could not, under the restrictions on issuance of permits contained in this statute, receive one for each two thousand population, or part thereof.

On the other hand, it is entirely conceivable, especially in a county having one or more cities of fifty-five thousand population, that if a D-3 permit is issued for each fifteen hundred population, or part thereof, within such city or cities, there could not be issued in the territory of the county outside of such cities, one permit for each two thousand population, or part thereof, if literal application is given to that part of the

statute which permits the issuance of only one permit for each two thousand population, or part thereof in the county.

To hold then, that in all cases not more than one permit shall be issued for each two thousand population, or part thereof, in any county would, as stated above, render that portion of the statute which permits the issuance of permits on the basis of one for each two thousand population, or part thereof, in a municipality, ineffective.

It is a fundamental principle that a construction of a statute which does not give effect to every part of the language thereof must be rejected. In regard thereto, it is stated in 37 O. J. 612:

> "The presumption is that every word in a statute is designed to have some effect. Therefore, an attempt should be made to give effect to each and every word, phrase, clause, and provision."

Of like effect is the following language contained in the opinion of the court in the case of State, ex rel. vs. Board of Education, 95 O. S. 367, at page 372:

> "There are some well-settled rules of construction which we think must be applied to the proviso in question, and which control. It must be construed as a whole and give such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative."

In Sutherland on Statutory Construction at page 317 it is said:

> "The whole and every part must be considered. The general intent should be kept in view in determining the scope and meaning of any part. This survey and comparison are necessary to ascertain the purpose of the act and to make all the parts harmonious. They are to be brought into accord if practicable, and thus, if possible, give a sensible and intelligible effect to each in furtherance of the general design. A statute should be so construed as a whole, and its several parts, as most reasonable to accomplish the legislative purpose. If practicable, effect must be given to all the language employed, and inconsistent expressions are to be harmonized to reach the real intent of the legislature."

By giving effect to every word in the statute, there could be issued in each city and village in a county one permit for each two thousand population, or part thereof, and at the same time, only one permit could be

issued for each two thousand population, or part thereof, in the entire county. This literal application of the statute in question would, as pointed out above, in many instances, lead to ridiculous and absurd consequences. On this point it is stated in 37 O. J. at page 643:

> "It is to be assumed that the legislature intends to enact only that which is reasonable, and courts sometimes refer to the presumption against absurdity in the provisions of a legislative enactment. It is clear that the general assembly will not be assumed, or presumed, to have intended to enact a law producing unreasonable or absurd consequences.
>
> One of the established rules for the construction of statutes is that doubtful provisions should, if possible, be given a reasonable, rational, sensible, or intelligent construction. Accordingly, it is the duty of the courts, if the language of a statute fairly permits, or unless restrained by the clear language of the statute, so to construe it as to avoid unreasonable, absurd, or ridiculous consequences. Accordingly, in interpreting an ambiguous statute, the reasonableness or otherwise of one construction or the other is a matter competent for consideration."

In the case of State, ex rel. vs. Carran, 133 O. S. 50, it was held that an ordinance which attempted to limit the issuance of permits to one for every thirty-five hundred population in the City of East Cleveland was void under Article XVIII, Section 3 of the Ohio Constitution in that such ordinance was in conflict with the provisions of Section 6064-17, supra. In the opinion of the court, speaking through Gorman, J., it was stated (page 53):

> "* * * The ordinance of the city of East Cleveland is clearly in conflict with Section 6064-17, General Code, when its operative effect is considered.
>
> For illustration, according to the federal census of 1930, the city of East Cleveland had a population of 39,667. Under the provision of the statute not more than twenty permits could be granted by the Board of Liquor Control. The discretion to grant permits up to that number was vested in the Board of Liquor Control. This ordinance in question seeks to restrict that discretion, and limit the permits to be issued in East Cleveland to eleven."

By considering then that one permit may be issued for each two thousand population, or part thereof, in any city or village and observing the rules of statutory construction above quoted, it would seem that the question herein should present no difficult matter for determination.

By giving full effect to the entire statute and construing the same in such a manner so as to avoid absurb consequences, I am constrained to the view, and it is accordingly my opinion, that under the provisions of Section 6064-17 of the General Code, permits may be issued by the Department of Liquor Control on the following bases:

1. One class D-3, class D-4 and class D-5 permit may be issued for each two thousand population, or part thereof, in any village, or city of a population of less than fifty-five thousand.

2. One class D-3 permit may be issued for each fifteen hundred population, or part thereof, in any city of a population of fifty-five thousand or more.

3. One class D-3, class D-4 and class D-5 permit may be issued for each two thousand population, or part thereof, in the territory lying without the corporate limits of cities or villages in any county.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

948.

POOR RELIEF—WHERE BOARD OF TOWNSHIP TRUSTEES AGENT OF COUNTY COMMISSIONERS—MEMBERS COMPENSATED FOR SERVICES FROM TOWNSHIP FUNDS, NOT FROM POOR RELIEF FUNDS—SECTIONS 3294, 3391-1 G. C.—PROVISIONS, HOUSE BILL 675, 93rd GENERAL ASSEMBLY SUPERSEDE THOSE OF SECTION 3476 G. C., IN RE POWERS AND DUTIES BOARDS OF TOWNSHIP TRUSTEES AND TOWNSHIP TRUSTEES.

SYLLABUS:

1. When the board of county commissioners have by resolution designated the board of township trustees as agent in the administration of poor relief under authority of Section 3391-1, General Code, the members of such board of township trustees may not be compensated for their services from poor relief funds but may be compensated for their services from township funds under authority of Section 3294, General Code, but within the limitations therein set forth.

2. Since the enactment of House Bill No. 675 by the Ninety-third General Assembly, which act provides a complete system for the dispensing of poor relief, including that formerly dispensed by boards of township trustees under authority of Section 3476, General Code, the provisions of House Bill No. 675 supersede those of Section 3476, General Code, with reference to the duties of township trustees, and take away