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LIQUOR CONTROL, DEPARTMENT OF—MAY USE SINGLE CERTIFICATE OF PERMIT UNDER PROVISIONS OF ACT—CLASSES C-1, C-2, D-1, D-2, D-3, D-3A, D-4, D-5 PERMITS—DEPARTMENT MAY PROVIDE APPROPRIATE DESIGNATIONS ON SUCH SINGLE CERTIFICATE FORM.

SYLLABUS:

The Department of Liquor Control may use a single certificate of permit under the provisions of the Liquor Control Act for Classes C-1, C-2, D-1, D-2, D-3, D-3A, D-4 and D-5 permits by providing appropriate designations on such single certificate form.

Columbus, Ohio, February 15, 1950

Hon. Oscar L. Fleckner, Director of Department of Liquor Control
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Your legal opinion is respectfully requested as to whether this Department may lawfully utilize a single certificate of permit under the provisions of the Ohio Liquor Control Act for Classes C-1, C-2, D-1, D-2, D-3, D-3A, D-4 and D-5 permits by providing appropriate designations on such single certificate form.

“A proposed copy is enclosed for the purpose of better acquainting you with the idea. We would appreciate having the enclosure returned since we may find it necessary to change a word here and there. You will note that six blocked-out spaces have been provided. It is anticipated that at the time of issuance, the particular classes of permits will be stamped in such spaces. For instance, should it be concluded that an applicant qualifies for Classes C-1 and C-2 permits the designation, ‘C-1’, and ‘C-2’ would be stamped in the first two blocks. The remaining blocks would be stamped in a manner which would clearly indicate that the holder of the certificate is limited to Classes C-1 and C-2 permits. You will note also we propose to print the statutory conditions as to each class of permit concerned on the certificate form which will be issued to permit holders. Our file copies, however, will not carry the printed matter appearing on the left hand side of the enclosure. We also anticipate a regulation requiring the posting of the certificate form at full width and unfolded.

“It has long been the practice to issue a separate certificate for each class of permit. It is not at all unusual for a single permit holder to have as many as four separate permits. Separate applications also have been required for each class of permit. This has resulted, in first, a confusing and what we consider to be an unnecessary burden upon the applicants. Second, the Department has struggled with a filing system by which files are maintained by classes of permits.

“We have proposed a revision of the application forms and such proposals have been distributed among the Staff members of this Department as well as representatives of the industry for comments and suggestions as to form. No final decision will be entertained until we have your opinion as to legality of the idea. Should it be your opinion that a single certificate may be lawfully utilized, formal conferences will be had with the Auditor of State

as well as with the Tax Commissioner so that the details of operation may be mutually agreed upon for auditing and tax purposes.

"We have sampled opinion with the industry and administrative officials and we have been unable to find any direct prohibition against the use of a single certificate form, but we are withholding further consideration pending receipt of your opinion. Should it be found to be both lawful and practicable to utilize a single certificate form we believe that all of the administrative procedures will be greatly simplified."

Section 6064-3, General Code, provides in part as follows:

"The board of liquor control shall have power except as otherwise provided in this section:

"1. To adopt and promulgate, repeal, rescind, and amend, in the manner herein required, rules, regulations, standards, requirements, and orders necessary to carry out the provisions of the liquor control act and amendments thereof, including the following: * * *

"(b) Rules and regulations with reference to applications for and the issuance of permits, for the manufacture, distribution, transportation, and sale of beer and intoxicating liquor, and the sale of alcohol, subject to the provisions of the liquor control act and amendments thereof; and governing the procedure of the department in the suspension, revocation, and cancellation of such permits * * *."

The statutes of Ohio do not prescribe any particular form as to liquor permits. It is obvious that the legislature had the power to enact laws which would establish in detail the exact requirements for such a permit. In the absence of such legislation, it may be assumed that the General Assembly intended that the Department of Liquor Control should determine the form.

The ordinary course of procedure is to give to the various departments the power to perform the detailed administrative functions such as setting up the forms of license. Section 6064-3, General Code, gives the Department of Liquor Control the power to adopt and amend rules and regulations necessary to carry out the provisions of the Liquor Control Act. Establishing the form of the permit is certainly one of the functions necessary to carry out the provisions of the act. Any rule promulgated by the department should be a reasonable rule. I can see no reason why a single certificate should injure or affect anyone in an unreasonable way. If the certificate is so set up that it will not be confusing

or misleading, it would probably be beneficial to the permit holder and also simplify the administrative procedures relative thereto.

In conclusion, therefore, it is my opinion that the Department of Liquor Control may use a single certificate of permit under the provisions of the Liquor Control Act for Classes C-1, C-2, D-1, D-2, D-3, D-3A, D-4 and D-5 permits by providing appropriate designations on such single certificate form.

Respectfully,

HERBERT S. DUFFY,

Attorney General.