From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said village.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1320.

STATE OF OHIO MAY NOT REGULATE IMPORTATION OF SPIRITUOUS LIQUORS INTO FEDERAL ARMY FORTS AND RESERVATIONS CEDED TO UNITED STATES BY CESSIONS ACTS.

SYLLABUS:

The State of Ohio has no power to tax or regulate the importation of spirituous liquors into federal army forts and reservations, the exclusive jurisdiction over which has been ceded to the United States either by special cessions acts or the General Cessions Act of 1902.

COLUMBUS, OHIO, October 18, 1937.

HON. J. W. MILLER, *Director, Department of Liquor Control, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

> "This Department has been requested to issue consents to import spirituous liquor to the Wilbur Wright Officer's Club located at Patterson Field, Dayton, Ohio, and on such importation a waiver of the Gallonage Tax and State mark-up on the shipments.
>
> As this particular field is property of the Federal Government they claim the right to import such liquors without the payment of the State mark-up and Gallonage Tax.
>
> We request your opinion on the scope of our authority in the matter."

Inasmuch as I understand that you desire a similar opinion in regard to Fort Hayes, I will herein endeavor to consider it along with Wright and Patterson Field Military Reservations.

The 17th paragraph of Section 8, Article I of the Constitution of the United States provides as follows:

"The Congress shall have power: * * * *

"To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and all other needful buildings; and * * *"

I am informed that the property which now constitutes Fort Hayes was acquired by deed by the United States on February 17, 1863. Subsequently, on March 1, 1863, the Ohio Legislature enacted the following:

"Ceding to the United States of America, jurisdiction over certain lands and their appurtenances, in the county of Franklin, in the State of Ohio, and exempting the same from taxation.

Whereas: The United States have appropriated money for the establishment of a National Arsenal at Columbus, in the County of Franklin, and State of Ohio, for the deposit and repair of arms and other munitions of war, and for other purposes of a public nature:

Section 1. Be it enacted by the General Assembly of the State of Ohio, That jurisdiction of lands and their appurtenances, that have been or may be purchased in said County of Franklin for the establishment of the aforesaid Arsenal, be and is hereby ceded to the United States of America: Provided, however. That all civil and criminal process issued under the authority of the State of Ohio, or any officer thereof, may be executed on said lands and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid.

Section II. That the lands above described, with their appurtenances, and all buildings and other property that may be thereon, shall forever hereafter be exempted from all State, County, and municipal taxation and assessment whatever, so long as the same shall remain the property of the said United States of America.

Section III. This act shall take effect and be in force from and after its passage."

The Arsenal referred to in the Special Session Act above quoted now constitutes Fort Hayes.

In order to obviate the necessity for enacting special cessions acts for each Federal Reservation and fort, the legislature on May 6, 1902, adopted a General Act of Cessions now know as Sections 13770 to 13772, General Code. The provisions of the said General Cessions Act are as follows:

> "Section 1. That the consent of the State of Ohio is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom houses, court houses, potoffices, arsenals, or other public buildings whatever, or for any other purposes of the government.
>
> Section 2. That exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.
>
> Section 3. The jurisdiction ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state.
>
> Section 4. This act shall take effect and be in force from and after its passage."

I have been informed by the Judge Advocate of Wright Field that the lands now comprising Wright and Patterson Field Military Reservations were acquired by various deeds from June 16, 1917, to June 24, 1930.

From a consideration of the foregoing it is clear that Wright and Patterson Field Military Reservations and Fort Hayes are all properties of the United States Government within the provisions of the 17th paragraph of Section 8, Article I, of the Constitution of the United States.

Your communication refers to the Liquor Gallonage Tax which is provided for in Section 6064-10, General Code, in the following language:

> "* * * In any event (a) a sum equal to one dollar for each gallon of spirituous liquor sold by the department during the period covered by the payment shall be paid into the state treasury to the credit of the general revenue fund in the manner provided by law; * * *"

You also refer to the "state-mark-up." I assume you have in mind Regulation No. 17 of the Board of Liquor Control which provides as follows:

> "With reference to accepting special retail orders from non-permittees for liquor not carried in stock by the Department of Liquor Control at this time, there shall be added to the actual cost of this merchandise f.o.b. our warehouse, warehousing, trucking, State gallonage tax, and of this cost and sales expense shall be added fifteen per cent handling charge, and to this total shall be added a thirty per cent mark-up."

This regulation adopted by the Board of Liquor Control relates to the fourth paragraph of Section 6064-12, General Code, which authorizes special consents to individuals for the purchasing of varieties or brands of spirituous liquor not stocked by the state liquor stores.

Section 6064-14, General Code, provides inter alia that no person shall cause to be transported or imported intoxicating liquor into this state for delivery, use or sale herein, unless such person shall have fully complied with the provisions of the Liquor Control Act.

In the case of *Standard Oil Co.* vs. *California,* 291 U. S. 262, the Supreme Court of the United States held as set forth in the headnote:

> "A state is without power to levy a license tax in respect to the selling and delivery of goods on a military reservation included within the territorial limits of the state but over which the full legislative authority has been ceded to the United States by an Act of the state legislature."

That case involved the California Gallonage Tax upon motor vehicle fuel "sold and delivered * * * in this state" and the court held that such tax could not be collected upon fuel sold to the post exchange which was located within a federal military post, exclusive jurisdiction over

which had been ceded to the United States. (The 74th Congress enacted a Bill which conferred authority upon the states to tax gasoline or motor vehicle fuels when sold through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders and other similar agencies. However, the rule of law established by the Supreme Court in *Stanlard Oil Co.* vs. *California, supra,* was not affected thereby as the recent legislation recognized that without such consent on the part of the Federal Government the states would have no power of taxation within this field.)

The gallonage tax and mark-up to which you have reference in your letter might well be considered as taxes. If this view is taken then this matter is comparable to the cigarette sales and license taxes. In this regard it was held in an opinion appearing in Opinions of the Attorney General for 1932, Vol. II, page 828, as set forth in the syllabus:

> "The Ohio cigarette sales and license taxes are not applicable to the sale of cigarettes upon the grounds of the two federal aviation fields, namely, Wright and Patterson Fields, in Montgomery County."

In so far as that opinion is relevant to the present matter I approve and concur in its holding. (See also O. A. G. 1933, Vol. III, page 2008.)

The Supreme Court of Ohio has recently indicated, however, that in its opinion the provisions of the liquor Control Act were adopted under the police power of the state. *State, ex rel. Superior Distributing Co.* vs. *Davis, et al.,* 132 O. S. 308, 321, when the court thus indicated the above it was considering the Liquor Control Act in its entirety and it is reasonable to infer that the court did not mean that none of the provisions of the said Liquor Control Act were tax measures. Nevertheless, the possibility that the court might hold that all of the Liquor Control Act was enacted under the police power is worthy of consideration.

In the case of *In re Ladd,* 74 Fed. 31, it was held that the criminal laws of a state ceased to be in force within ceded territory and that laws which regulated the sale of intoxicating liquors and punishing unlicensed sales were inoperative within such territories. This opinion by the Federal Circut Court was cited with approval in *U. S.* vs *Unseuta,* 281 U. S. 138, 143, and therefore has the authority of the Supreme Court of the United States. To a similar effect is the case of *Commonwealth* vs. *Clary,* 8 Mass, 72, wherein it was held that Massachusetts statutes pertaining to the sale of intoxicating liquors were inoperative within the boundaries of ceded federal lands.

It might be urged that the transactions contemplated in your letter would constitute federal crimes because of the provisions of Section 289

of the Criminal Code of the United States (Section 468, Title 18, U. S. C. A.). This section reads as follows:

> "Whoever, within the territorial limits of any state, organized Territory, or District, but within or upon any of the places now existing or hereafter reserved or acquired, described in Section 451 of this title, shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or District in which such place is situated, by the laws thereof in force on April 1, 1935, and remaining in force at the time of the doing or omitting of the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment."

Section 6064-14 of the General Code, first became effective December 23, 1933. It was subsequently amended, however, by the 91st General Assembly in Senate Bill No. 2, 116 O. L. 511 and by the 92nd General Assembly in Amended House Bill No. 501, effective August 23, 1937. Inasmuch as Section 289, supra, of the Criminal Code is a criminal provision and since it is universally conceded that criminal enactments should be strictly construed, the conclusion is inescapable that because of the amendments since April 1, 1935, Section 6064-14, General Code, is not a law now in effect which was in effect April 1, 1935. However, it is not necessary for the purposes of this opinion to decide this question, inasmuch as the state has no authority to prosecute for a violation of Section 289, supra, as such a violation constitutes a federal and not a state offense.

In your letter you refer to the Department being requested to issue consents for the importation into Fort Hayes and Wright and Patterson Fields Military Reservations. - Hereinbefore I have pointed out that the state has no taxing or police jurisdiction over such federal lands and therefore in my opinion the Department of Liquor Control has no authority to grant or refuse to grant such consents to import.

In specific answer to your inquiry it is my opinion that the Department of Liquor Control has no jurisdiction under the Liquor Control Act of Ohio to require the payment of the Gallonage Tax or the mark-up provided for in Regulation No. 17 of the Board of Liquor Control on liquors imported into Fort Hayes and Wright and Patterson Fields Military Reservations.

Respectfully,

HERBERT S. DUFFY,

Attorney General.