after if the vacancies have not been filled previously and may enter upon the discharge of the duties of the office."

If, however, the committeeman elect fails and refuses to file a proper expense statement, a vacancy should be declared by the body of which he is elected a member, in this instance the county central committee, and said committee should proceed to fill the vacancy.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

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2621.

ICE CREAM MANUFACTURER—LICENSE—TYPES OF FREEZERS DISCUSSED.

*SYLLABUS:*

1. *By the terms of Section* 12730-3, *General Code, no person, firm or corporation shall engage in the business of operating a commercial ice cream plant as that term is defined by Section* 12730-7, *General Code, without first obtaining a license to operate such a plant from the Director of Agriculture.*

2. *A person, firm or corporation who uses a machine such as the "T. Freezer" in which ice cream is manufactured for the purpose of being placed on the open market, either wholesale or retail, for general consumption as human food, whether such machine is used in a hotel, restaurant, ice cream parlor or amusement place, is required to obtain a license therefor as provided by Section* 12730-3, *General Code.*

3. *By the terms of Section* 1177-12, *General Code, the Department of Agriculture of Ohio has authority to make such uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy and sanitary laws of this state.*

4. *Upon an application for a license being made as provided in Section* 12730-3, *General Code, it then becomes the duty of the Director of Agriculture to cause an investigation to be made of the plant and equipment of the applicant. If it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant and that the plant is in a sanitary condition, then a license should be issued to such applicant.*

COLUMBUS, OHIO, September 24, 1928.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Division of Foods and Dairies, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter dated September 17, 1928, which reads as follows:

"There have recently been placed on sale in the State of Ohio some new types of ice cream freezers. These machines are designed for use in drug stores, confectioneries and other retail stores. They are a combination of an electrical freezer and a holding refrigerator of the Frigidaire type installed in a cabinet as a single unit, designed to be used in sales room and of satisfactory construction. Mr. Werner has a detailed description of one type of these machines.

Two questions have arisen in regard to this type of machine as follows:

First, would a manufacturer using this type of machine be compelled to obtain a license from the Director of Agriculture for the operation of a commercial ice cream plant, as provided in Section 12730–3?

The second and what this department considers the more important of these two questions is as follows:

Would a manufacturer using this type of machine be compelled to comply with all the department regulations governing commercial ice cream plants, including those relating to the location of plant, light and ventilation, construction of floors, walls and ceiling, sterilization of fixtures, utensils and containers, screens, toilets and other use of tobacco in work room?

Your opinion on these questions is requested at your earliest convenience."

Inasmuch as I only have before me the general description and specification details of "The T. Freezer" manufactured by The T. Freezer Corporation, I must necessarily confine my opinon at this time to this one type of machine.

On April 29, 1921 (109 v. 323), the Legislature passed an act entitled:

"An Act—Providing for the licensing of ice cream plants and defining and regulating the sale of ice cream."

Section 1 thereof, now Section 12730–1, General Code, defines the various forms of ice cream as a commercial product in this state. Section 3 thereof, now Section 12730–3, General Code, provides:

"No person, firm or corporation, shall be engaged in the business of operating a commercial ice cream plant without first obtaining a license for the operation of such a factory from the secretary of agriculture. Application for such license shall be made to the secretary of agriculture in such manner as he may prescribe and shall be accompanied by a fee of one dollar and fifty cents ($1.50) for each gallon capacity of the freezer or freezers used. The secretary of agriculture shall thereupon cause an investigation to be made and if it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant, and the plant is in a sanitary condition, the secretary shall cause a license to be issued which shall be in effect for one year and may be renewed upon the same conditions and payment of the same fee, annually thereafter."

By the terms of Section 7 thereof, now Section 12730–7, General Code,

"* * * a commercial ice cream plant is hereby defined as a place or building in which ice cream is manufactured for the purpose of being placed on the open market for general consumption as human food, in hotels, restaurants, ice cream parlors or amusement places, by wholesale and retail dealers, but does not include ice cream manufactured in private homes, clubs or any gathering of a co-operative, social nature."

By the terms of Section 154–42, General Code, the Department of Agriculture is vested with all powers and directed to perform "all duties vested by law in * * * secretary of agriculture," this section further providing that whenever "powers are

conferred or duties imposed by law upon * * * (the) secretary of agriculture, * * * such powers and duties shall be, excepting as herein provided, construed as vested in and imposed upon the department of agriculture."

It is stated in 36 Corpus Juris, at page 1106, that:

> "The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts."

And at page 1114 of the same authority it is said:

> "In the interpretation of statutes words in common use are to be construed in their natural, plain, and ordinary signification."

Bearing in mind these cardinal rules of construction of statutes your attention is directed to the following definitions which appear in Webster's New International Dictionary, viz.,

> "Plant, * * * 4-A. The machinery, apparatus, fixtures, etc. employed in carrying on a trade or a mechanical or other industrial business. In the commercial sense, a *plant* may include real estate and all else that represents capital invested in the means of carrying on a business, exclusive of the raw material or the manufactured product."
>
> "Manufacture, * * * 1. To make by hand, by machinery or by other agency; to work, as raw or partly wrought materials, into suitable forms for use; to fabricate; to produce mechanically."

From a reliable source I am informed that the "T. Freezer" installation consists of three parts, two of which are combined to form one complete unit, viz., the T. freezer and the cabinet, while the third part is the automatic freezing machine.

The normal operation of this freezer first involves operating the freezing machine until a certain temperature below zero is reached. After the freezer is properly chilled the "mix" is poured into the freezer through an opening in the top thereof. The "mix" is purchased either from an ice cream plant or a dairy that makes "mix" for ice cream plants. After a certain process has been completed in the freezer, the semi-hardened mix is drawn off through an opening at the bottom thereof into containers of varying capacity and these containers are then placed in the "hardening" cabinet. After a sufficient time has elapsed the ice cream is then ready for sale and consumption. In other words, a "mix" is placed into the machine and the resulting product is ice cream. To contend that the machine does not *manufacture* ice cream would be mere sophistry.

In view of the foregoing and answering your first question specifically, it is my opinion that a person, firm or corporation, who uses a machine such as the "T. Freezer" in which ice cream is manufactured for the purpose of being placed on the open market, either wholesale or retail, for general consumption as human food, whether such machine is used in a hotel, restaurant, ice cream parlor or amusement place, is required first to obtain a license therefor as provided by Section 12730-3, General Code.

In answer to your second question your attention is directed to that part of Section 12730-3, General Code, which provides:

> "* * * Application for such license shall be made to the secretary of agriculture * * *. The secretary of agriculture shall thereupon cause

> an investigation to be made and if it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant, and the plant is in a sanitary condition, the secretary of agriculture shall cause a license to be issued. * * *."

In other words, when an application for a license to engage in the business of operating a commercial ice cream plant, as that term is defined by Section 12730–7, General Code, is presented to the Director of Agriculture, Section 12730–3, General Code, directs such Director to cause an investigation to be made of the premises and plant of the applicant. If it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant, and the plant is in a sanitary condition, the Director of Agriculture must issue the license provided. Obviously, if the investigation of the premises discloses that the applicant is not supplied with the facilities necessary to operate a sanitary ice cream plant or that the plant is not in a sanitary condition, the Director of Agriculture is authorized to refuse such license to such applicant.

For your information Webster's New International Dictionary defines the adjective "sanitary" as:

> "Of or pertaining to health, designed to secure or preserve health; relating to the preservation or restoration of health; hygienic."

You direct my attention to certain sanitary regulations for ice cream factories and rulings on ice cream contained in a pamphlet entitled "Sanitary Regulations and Standards" conpiled by the Department of Agriculture of the State of Ohio. I deem it unneccessary to quote the same at length herein. The act (109 v. 323) itself is silent in so far as authority is therein given to the Director of Agriculture to provide rules and regulations such as have been promulgated and adopted. The only reference to regulations or orders made by you, as Director of Agriculture, with regard to commercial ice cream plants is that contained in Section 12730–4, General Code, viz.,

> "The secretary of agriculture may suspend any such license temporarily for failure to comply with the provisions of this act, or any regulations or order made by him hereunder."

There is no question, however, as to your power to promulgate and adopt such a code of regulations. By Section 1177–12, General Code, the "Secretary of Agriculture" (whose powers as above pointed out, are vested in the Department of Agriculture) is empowered to "make such uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy and sanitary laws of this state." I do, however, desire to point out the inapplicability of many of such regulations and rulings in so far as the operation of the freezer under consideration is concerned. By this I mean that such regulations were promulgated and adopted with a view toward regulating a manufacturing establishment and process totally different and distinct from the operation of the machine in question. In other words, the advancement of science and human skill has produced an ice cream manufacturing plant for commercial use, the regulation of which by your department apparently requires an adjustment of present regulations and the promulgation and adoption of new ones in order to fit changed conditions. I might add that any rule or regulation adopted or to be adopted by you could only be enforced in the courts so long as such rule or regulation was reasonable in its requirements and is reasonably directed to accomplish the end in view.

Because it is manifest that the majority of the various rules and regulations now in force and effect could have no application to the present inquiry, I am of the opin-

ion that your second question must be answered in the negative. It is further my opinion that, upon an application for a license being made it then devolves upon you to cause an investigation to be made of the plant and equipment of the applicant. If it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant and that the plant is in a sanitary condition, then a license should be issued to such applicant.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

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2622.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF JACOB Y. DYKE AND E. B. HATFIELD, IN FRANKLIN TOWNSHIP, ROSS COUNTY, OHIO.

COLUMBUS, OHIO, September 24, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination corrected abstracts covering two separate tracts of land in Franklin Township, Ross County, Ohio, of which Jacob Y. Dyke and E. B. Hatfield are the owners of record, and which said tracts of land are more particularly described as follows:

> *First Tract:* Part of the Virginia Military Survey No. 13,441, being bounded and described as follows: Beginning at a White Oak, corner to Survey No. 14,849 and Number 13,516 and running thence North Fifty (50) degress West One hundred and fifteen (115) poles to a stake on Britton's corner to Survey No. 13,523, thence South with said Britton's line Fifty-one (51) degrees West One hundred and thirty-four (134) poles to a stake, thence Forty-three (43) degrees West Fifteen (15) poles, thence South Sixty-four (64) degrees East Twenty-six (26) poles to a Hickory, thence South Eighteen (18) degrees East Thirty-eight (38) poles to Two (2) Chestnut Oaks, thence South Forty-four (44) degrees East Forty (40) poles to Three (3) Chestnut Oaks corner to Survey No. 14,891 and No. 14,849, thence North Fifty-eight (58) degrees East One hundred and Sixty-six (166) poles to the place of beginning, containing Ninety-nine and one-fourth (99¼) acres, be the same more or less.
>
> *Second Tract:* Being part of Survey No. 14,523, beginning at a large White Oak near the top of the ridge, thence South (41½) degrees East 15.6 poles to a White Oak, thence South (62) degrees East (47.2) poles to a stone, thence South (39) degrees East (40) poles to a stone, thence South (57) degrees West (127) poles to a stone, thence North bearing East (135) poles, more or less, containing thirty-five (35) acres, more or less."

From my examination of the corrected abstract of title submitted with respect to the second tract of land above described, I am of the opinion that said Jacob Y. Dyke and E. B. Hatfield have a good and merchantable fee simple title to said tract of land, free and clear of all encumbrances except the taxes on said land, which, as stated in said abstract, are the taxes for the last half of the year 1927 and the undetermined taxes for the year 1928.