relating to the duties of boards of education make it the duty of a board of education, under certain circumstances, to provide for the transportation of pupils. It is well recognized that in the performance of this duty boards of education may purchase busses and transport the pupils, or they may contract with a third party to transport the pupils. In an opinion to be found in Opinions of the Attorney General for 1930, Vol. III, page 1716, the following appears:

> "Boards of education are authorized by statute to furnish transportation for school children attending the public schools, under certain circumstances. In some instances the duty to furnish such transportation is mandatory. There is no specific statutory direction as to whether this transportation be furnished by contract or whether the board purchase vehicles and employ drivers and provide the transportation under the direct supervision of the board instead of having it provided by an independent contractor. Either method has always been recognized as lawful."

See also Opinions of the Attorney General for 1930, Vol. II, page 1133. The legislature when they enacted section 7731-5 must be presumed to have known that boards of education very often do not own the busses that are used in the transportation of pupils. *City of Cincinnati* vs. *Connor,* 55 O. S. 82 at page 89.

Hence, it is my opinion, in specific answer to your questions:

1. Under the provisions of section 7731-5, General Code, a board of education may, but is not required to, procure liability and property damage insurance.

2. A board of education, by virtue of this section, may take out insurance covering pupils who are transported in school busses which are owned by the board of education, or are transported in busses which are not owned by the board of education.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1676.

BEER—CLASS A PERMITTEE CANNOT SELL OR SHIP BEER MANUFACTURED IN OHIO FROM BRANCH WAREHOUSE OR PLANT WITHOUT SECURING CLASS B PERMIT.

SYLLABUS:

By virtue of the provisions of Section 6212-54, *General Code, as amended in Amended Senate Bill No.* 380, *a class A permittee cannot sell or ship beer manufactured in Ohio from a branch warehouse or from a branch plant wherein beer is only sold and shipped but not manufactured, without first securing a class B permit.*

COLUMBUS, OHIO, October 5, 1933.

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

DEAR SIR:—This will acknowledge your letter requesting my opinion as to whether the Ohio Liquor Control Commission can adopt the following rule and regulation:

"If, and when a manufacturer of beer establishes a branch plant or warehouse, for the manufacture, sale or distribution of beer, he shall be deemed a distributor as to such branch plant or warehouse, and shall obtain a B permit for each such branch plant or warehouse, and shall pay the usual fee of $1,000.00 and the additional fee of five (.05) cents per barrel over 5,000 barrels, as provided by law, during the tax year."

Section 6212-51, General Code, 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."

Section 6212-54, General Code, as amended in Amended Senate Bill No. 380, reads in part as follows:

"The commission shall formulate rules and regulations with reference to applications for, and the issuance of, permits and may issue the following permits:

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. The fee for a permit to the manufacturer shall be computed on the basis of the annual production of each brewery plant, provided that the initial fee shall be one thousand dollars ($1,000.00) per year for each brewery plant producing five thousand (5,000) barrels or less annually, and the initial fee of one thousand dollars ($1,000.00) shall be increased at the rate of five cents (.05) per barrel for all beer produced in excess of five thousand (5,000) barrels during the tax year.

Permit B: A permit to 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. The fee for a permit to the distributor shall be computed on the basis of his or its annual sales or distribution of beer. The initial fee shall be one thousand dollars ($1,000.00) and this fee shall be increased at the rate of five cents (.05) per barrel for all beer distributed or sold in Ohio in excess of five thousand (5,000) barrels during the tax year.

If a distributor, person, firm or corporation ships or sells beer from a branch plant or warehouse, he shall as to each such branch plant or warehouse be regarded as a distributor and shall pay the minimum fee for each such branch plant or warehouse. * * * *."

It is evident from a reading of Section 6212-51, General Code, that the legislature has invested the Ohio Liquor Control Commission with authority to regulate and control the sale of beer in Ohio. Under that grant of power, the Commission could by rule and regulation provide that beer manufactured by a Class A permittee be sold and distributed only from the brewery plant for which a license was issued. However, the Ohio Liquor Control Commission, under that grant of power, would not necessarily have authority to promulgate a rule and regulation which would require a Class A permittee to procure a distributor's

license (Class B permit) when such permittee sells and distributes his or its product from a warehouse or plant other than that in which the beverage was made.

The legislature, evidently realizing that the Commission could not by rule and regulation require a Class A permittee to procure or secure a Class B permit when selling or distributing beer made in Ohio from a branch plant or warehouse, amended Section 6212-54 in order to remedy that matter. Section 6212-54, as originally enacted in Amended Substitute Senate Bill No. 346, read in so far as pertinent as follows:

> "If a distributor ships or sells beer from a branch plant or warehouse, he shall as to each such branch plant or warehouse be regarded as a distributor and shall pay the minimum fee for each such branch plant or warehouse."

The same paragraph, as amended in Amended Senate Bill No. 380, reads:

> "If a distributor, person, firm or corporation ships or sells beer from a branch plant or warehouse, he shall as to each such branch plant or warehouse be regarded as a distributor and shall pay the minimum fee for each such branch plant or warehouse."

It is quite evident by that amendment that the legislature intended all persons selling and distributing beer from a branch plant or warehouse to secure a Class B permit as to such sale and distribution and in respect to sales made in that manner a person, firm or corporation was to be deemed a distributor within the meaning of the licensing provisions of the so-called "Beer Law".

It may be contended that the language of that paragraph refers solely to distributors holding Class B permits and to no other persons, because the paragraph in question was contained in that part of Section 6212-54 which relates to the issuance of Class B permits. Such a conclusion would in effect render the amendment nugatory since Section 6212-54, as originally enacted, required all distributors, whether a person, firm or corporation selling or distributing beer from branch plants or warehouses, to secure a Class B permit for such branch warehouses or plants.

An interpretation of Section 6212-54, as amended, which would conclude that that section as amended referred solely to distributors operating under a Class B permit, would be subject to the criticism that it would have been unnecessary for the legislature to have amended that section in order to obtain that result. Such an interpretation would also come within the rule of law announced in the case of *Malloy* vs. *Marshall-Wells Hdw. Co.,* 173 Pac. 267 (Ore.), wherein it was held that:

> "An interpretation of the amended statute which leaves the law after the amendment in the same condition as before, is presumptively unsound."

Likewise, it must be borne in mind that when a legislature changes the language of a statute, it intends to change the meaning and effect of the amended statute. This rule of law was stated by the Supreme Court of Ohio in the case of *Board of Education of Hancock County* vs. *Boehm,* 102 O. S. 292, as follows:

"When an existing statute is repealed and a new and different statute upon the same subject is enacted, it is presumed that the legislature intended to change the effect and operation of the law to the extent of the change in the language thereof."

See also *Kiefer* vs. *State,* 106 O. S. 285 at p. 290 and *Board of Education* vs. *Board of Education,* 112 O. S. 108 at p. 114.

A similar rule of statutory interpretation was stated in the case of *Louisville and Nashville R. R. Co.* vs. *Mattingly,* 219 U. S. 467. The syllabus reads:

"The courts must have regard to all the words used by Congress in a statute and give effect to them as far as possible; and the introduction of a *New* word into a statute indicates an *intent* to cure a *defect in,* and *suppress* an *evil not covered by the former law.*" (Italics the writer's.)

The language of Mr. Justice Harlan at p. 475 is pertinent and reads:

"We cannot suppose that this change was without a distinct purpose on the part of Congress. The words 'or different' looking at the context, *cannot be regarded as superfluous or meaningless. We must have regard to all the words* used by Congress and as far as possible give *effect* to *them.* The *history* of the acts relating to commerce shows that Congress, when introducing into the Act of 1906 the word 'different', *had in mind the purpose of curing a defect* in the law and of *suppressing evil practices under it.* * * * * " (Italics the writer's.)

Thus, the addition of the words "person, firm or corporation" in that part of Section 6212-54 under consideration indicates that the legislature intended a change in meaning and effect in that section. The change in language in that section makes it impossible to construe it so as to make it synonymous with the meaning and effect of the section as it read prior to its amendment. If the legislature did not intend to change the meaning and effect of the section being discussed herein, it would have been unnecessary to have amended it in any manner, inasmuch as Section 6212-54, as originally enacted, required distributors holding Class B permits to secure additional permits for the sale or distribution of beer made from branch warehouses and plants.

Applying the rules of statutory interpretation announced in the cases cited, it follows that the clause "if a distributor ships or sells beer from a branch plant or warehouse" used in Section 6212-54, prior to its amendment, and the clause "if a distributor, person, firm or corporation ships or sells beer from a branch plant or warehouse" in Section 6212-54, as amended, are not equivalent expressions, either in meaning or effect. It must be assumed that the legislature so understood the difference and therefore chose the latter clause to effectuate the express result it desired to obtain. It is obvious that the legislature intended by the use of the words "person, firm or corporation" to require all persons, in addition to persons already licensed as distributors selling and distributing beer from plants or warehouses, to procure a Class B permit for such branch plants or warehouses. By that amendment, the legislature intended to include as distributors holders of Class A permits who sold and distributed beer from a branch plant or warehouse.

In view of the fact that the legislature has expressly legislated on the matter, it becomes unnecessary to determine whether the Ohio Liquor Control Com-

mission can accomplish the same result by rule and regulation.

Specifically answering your letter, I am of the opinion that by virtue of the provisions of Section 6212-54, General Code, as amended in Amended Senate Bill No. 380, a class A permittee cannot sell or ship beer manufactured in Ohio from a branch warehouse or from a branch plant wherein beer is only sold and shipped but not manufactured, without first securing a class B permit.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1677.

MUNICIPAL SINKING FUNDS—TRUSTEES THEREOF CANNOT ACCEPT FIRST MORTGAGES AS SECURITY FOR RETURN OF FUNDS DEPOSITED IN DEPOSITORY CREATED FOR THEIR FUNDS.

SYLLABUS:

Section 2288-1, General Code, does not authorize municipal sinking fund trustees to accept first mortgages as security for the return of funds deposited in a depository created for their funds. (Opinions of the Attorney General for 1929, Vol. I, p. 740, approved and followed.)

COLUMBUS, OHIO, October 5, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your letter asking my opinion concerning the following request:

> "The question has arisen as to whether banks selected as depositories for funds under the control of the sinking fund trustees of a municipality may secure deposits by the hypothecation of the securities mentioned in section 2288-1 General Code.
>
> I note that in opinion No. 495 of the Attorney General's Opinions for 1929, there is a holding to the contrary. I also note that in opinion No. 4076 of the Attorney General's Opinions for 1932, township trustees are authorized to accept such securities for the deposit of township funds.
>
> Under the reasoning of the latter opinion and in view of the fact that depository laws relating to township funds are similar to those relating to the deposit of municipal sinking funds, both providing only for the taking of a bond as security for deposits, I am unable to distinguish the two opinions and determine why sinking fund trustees are not authorized to take such securities from depositories, as well as township trustees.
>
> In view of the above, will you kindly advise this Department whether you are of the same opinion as your predecessor, expressed in his opinion No. 495 of 1929, or whether it is your opinion that sinking fund trustees may accept mortgages to guarantee their funds on deposit.
>
> You are aware, of course, that section 2288-1, General Code, authorizes the acceptance of mortgages to guarantee deposits of county, school