802.

APPROVAL—ARTICLES OF INCORPORATION OF THE WESTERN RESERVE MUTUAL CASUALTY COMPANY.

COLUMBUS, OHIO, June 29, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I have examined the articles of incorporation of The Western Reserve Mutual Casualty Company which you have submitted for my approval.

Finding the same not to be inconsistent with the Constitution or laws of the United States or of the State of Ohio, I have endorsed my approval thereon and return the same to you herewith.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

803.

DEPARTMENT OF LIQUOR CONTROL—TRANSPORTATION OF INTOXICATING LIQUOR—H PERMIT NECESSARY—CARRIERS BY RAIL—H PERMIT NECESSARY, WHEN.

SYLLABUS:

1. *Although it is not necessary for a motor carrier to secure an H permit to transport intoxicating liquor for the Department of Liquor Control, such a carrier is required under the terms of Section* 6064-15 *to obtain an H permit in the same manner as other carriers in order to transport beer or intoxicating liquor for others than the Department of Liquor Control.*

2. *Carriers by rail need not pay the permit fee provided for in Section* 6064-15 *as amended in Amended House Bill No.* 501, *or possess a license issued by the Public Utilities Commission of Ohio in order to obtain an H permit.*

3. *The exemption of carriers by rail from Section* 6064-15 *as amended in Amended House Bill No.* 501 *does not include a carrier which provides rail and motor vehicle transportation service.*

COLUMBUS, OHIO, June 30, 1937.

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

DEAR SIR: This will acknowledge receipt of your request for my opinion which reads as follows:

"Will you kindly interpret for us the definition of a Class H permit as defined in Section 6054-15 of House Bill 501, which reads as follows:

'PERMIT H: A permit for a fee of one Hundred dollars to a carrier by motor vehicle who also holds a license issued by the Public Utilities Commission of Ohio to transport beer, intoxicating liquor or alcohol, or any or all of them in this state for delivery or use in this state; providing, however, that nothing in this section shall prevent the department from contracting with common or contract carriers for delivery or transportation of liquor for the department. Any contract or common carrier so contracting with the department shall be eligible for an H permit the previous provisions notwithstanding; provided, further that manufacturers or wholesale distributors of beer or intoxicating liquor other than spirituous liquor who transport or deliver their own products to or from their premises licensed under the provisions of this act by their own trucks as an incident to the purchase or sale of such beverages shall not be required to obtain the H permit herein specified. Carriers by rail shall receive such H permit upon application therefor.'

Particularly do we wish your advice and interpretation on the sentence 'Any contract or common carrier so contracting with the Department shall be eligible for an H permit the previous provisions notwithstanding.' Does this mean that no fee will be required, or that they need not be the holder of a P.U.C.O. license, or both?

Also, does the sentence 'carriers by rail shall receive such H permit upon application therefor', mean that railway companies need not pay the fee of one hundred dollars? Would this apply to Railway Express Companies which deliver by truck from the depot to the consignee?"

I shall first consider the interpretation of the sentence "Any contract or common carrier so contracting with the Department shall be eligible for an H permit the previous provisions notwithstanding." The question quite obviously is, what meaning is to be attached to the phrase "the previous provisions notwithstanding." The language used is obviously quite awkward, especially in view of the wording of the last clause of the sentence appearing directly before it, to-wit: "* * * providing, however, that nothing in this section shall prevent the department from contracting with common or contract carriers for delivery or transportation of liquor for the department."

When the language of a statute is ambiguous and the intention of

the legislature is not readily apparent there are several aids to construction that the courts have used in determining the probable legislative intent. One of the most important elements to be considered is what is sometimes referred to as the system or scheme of the legislation. Amended House Bill No. 601 contains a number of revisions, amendments and additions to what is known as the Ohio Liquor Control Act, Sections 6064-1, et seq., General Code, which had for its main purpose the regulation of the liquor traffic in the State of Ohio. *State, ex rel. Superior Distributing Company* vs. *Davis, et al.*, 132 O. S. 306, 321. It is thus clear that the following rule of interpretation is applicable. 37 O. Jur., 666:

> "As a general rule when the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be construed so as to harmonize with the general tenor or purport of the system unless a different purpose is plainly shown."

Nowhere was there indicated in the Liquor Control Act before amendment, an intention to give a preference to carriers transporting liquor for the Department of Liquor Control except in that a license would not be necessary to perform such service for the Department of Liquor Control. If it were held that the phrase "the previous provisions notwithstanding" means that a carrier hauling for the Department of Liquor Control could receive an H permit authorizing it to transport beer, intoxicating liquor or alcohol, for permittees in like manner as other H permit holders without complying with the provisions as to the payment of a fee and the possession of a P. U. C. O. license, such a carrier would be given an unusual preferential status which would not be harmonious with the other provisions of the Liquor Control Act.

Recently I ruled in Opinion No. 715, that Section 6064-15 in Amended House Bill No. 501 went into effect immediately when signed by the Governor inasmuch as in my opinion this section is a law providing for a tax levy. If certain carriers are not to be required to pay the permit fee this would amount to an exemption from a taxation measure. The law is well settled that exemptions from taxation measures must be clearly found within the express terms of the statute, and as stated in the case of *Tax Commission* vs. *Paxson*, 118 O. S. 36, 41:

> "A claim of exemption from taxation by virtue of a statute is construed strictissimi juris."

This is not only true of taxation exemptions, for as stated in *State, ex rel.* vs. *Forney,* 108 O. S. 463, 467:

> "The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law."

The fact that the word "eligible" is used is also indicative of the intention that the mere fact that the carrier was performing services for the Department of Liquor Control, *to do which a license is not required,* should not render such carrier ineligible to secure an H permit and transport beer or intoxicating liquor or alcohol for others than the Department in the same manner as other carriers having an H permit.

For this reason and in view of the above authorities, I am compelled to the conclusion that the sentence in question was included by the legislature from an abundance of caution to clarify the right of a class of carriers described as "eligible" for the particular permit, and does not obviate the necessity of such carrier conforming to the conditions precedent to the obtaining of such permit, namely, payment of the permit fee and the possession of a P.U.C.O. license.

You also request an interpretation of the last sentence of the paragraph in Section 6064-15 of Amended House Bill No. 501 which provides for H permits, to-wit:

> "* * * carriers by rail shall receive such H permit upon application therefore."

I direct your attention to the first sentence in the paragraph which reads:

> "A permit for a fee of $100 to a carrier by *motor vehicle,* etc. * * *" (Italics ours.)

There can be little doubt that a carrier by rail would not come within this description. Therefore in my opinion carriers by rail are not required under the provisions of Section 6064-15 as amended in Amended House Bill No. 501 to pay a $100.00 fee or possess a license issued by the Public Utilities Commission of Ohio in order to obtain an H permit.

You also query whether carriers by rail would include companies which render service consisting of partial rail transportation and partial

truck transportation. Such a company would be a "carrier by motor vehicle" as part of the service to be rendered consists of motor vehicle transportation and therefore, in my opinion, would be required to qualify in the same manner as other motor vehicle carriers in order to obtain an H permit. The rule of statutory construction above recited that exemptions from general laws must be strictly construed, also pertains in this instance. Applying it, the conclusion is inescapable that the exemption of carriers by rail does not include carriers transporting by rail and motor vehicle. It is natural to presume that if the legislature intended to include other than those providing service of transportation solely by rail, it would have specifically described them.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

804.

APPROVAL—BONDS OF VILLAGE OF FAIRVIEW, CUYAHOGA COUNTY, OHIO $56,150.00 (Partly Limited and Partly Unlimited).

COLUMBUS, OHIO, June 30, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of Village of Fairview, Cuyahoga County, Ohio, $56,150.00 (Partly Limited and Partly Unlimited).

I have examined the transcripts relative to the above bonds purchased by you. These bonds comprise part of three issues of bonds of the above village dated October 1, 1936, bearing interest at the rate of 4% per annum, as follows: Special assessment refunding bonds in the aggregate amount of $260,975; general refunding bonds in the aggregate amount of $12,000; and general refunding bonds in the aggregate amount of $8,550.

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