(2) An owner of a "motor vehicle" or a "used motor vehicle" is required by the provisions of Section 6310-10, General Code, to file the bill of sale with the clerk of courts of the county in which the transaction of sale was consummated and also by the provisions of Section 6310-13, General Code, to either possess a bill of sale or file a sworn certificate of ownership with the clerk of courts in the county of his residence.

Respectfully,
JOHN W. BRICKER,
Attorney General.

993.

APPROVAL, CERTIFICATE OF INCORPORATION OF THE IMPROVED RISK MUTUAL INSURANCE ASSOCIATION.

COLUMBUS, OHIO, June 26, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the certificate of incorporation of The Improved Risk Mutual Insurance Association, and find that it is not inconsistent with the Constitution and laws of this State and of the United States. I am therefore herewith returning it to you with my approval endorsed thereon.

Respectfully,
JOHN W. BRICKER,
Attorney General.

994.

MEDICINAL LIQUOR—EFFECT OF SENATE BILL NO. 9, 90TH GENERAL ASSEMBLY UPON AMOUNT PHYSICIAN MAY NOW PRESCRIBE.

SYLLABUS:

The words "now permitted by federal statutes and regulations" appearing in Section 6212-15a, General Code, as amended by Amended Senate Bill No. 9 of the 90th General Assembly of Ohio, refer to federal statutes and regulations in force at the time such bill becomes effective, to wit: ninety days after said bill was filed with the Secretary of State, which date of filing was March 16, 1933.

COLUMBUS, OHIO, June 26, 1933.

HON. R. E. JOYCE, *Supervisor of Permits, District No. 6, Bureau of Industrial Alcohol, United States Treasury Department, Cincinnati, Ohio.*

DEAR SIR:—I have your communication of recent date which reads as follows:

"The undersigned is the Supervisor of Permits for the Sixth District which includes the states of Michigan, Ohio, Kentucky and Ten-

nessee, one of the statutory duties of such Supervisor being the issuing of permits to physicians authorizing them to prescribe intoxicating liquor for their patients for medicinal use, such permits being subject to the restrictions of the liquor laws of the state in which the physician lives or has his principal office.

When the terms of such state liquor laws are plain and unequivocal, no difficulty in issuing such permits arises, but when such state liquor laws are not plain and appear conflicting, it becomes necessary to request the Attorney-General of such state to give an opinion for our guidance in the premises. Such a condition now arises under the laws of Ohio. I refer to amended Senate Bill No. 9 to amend Section 6212-15a of the General Code of Ohio (commonly called the 'half-pint law') filed March 16, 1933, copy enclosed.

The following language in said Section 6212-15a:

'No intoxicating liquor except pure grain or ethyl alcohol or spirituous liquor in quantities of one-half pint in any period of ten days * * * shall be manufactured, sold, prescribed, or dispensed for medicinal purposes'

was amended to read:

'No intoxicating liquor except pure grain or ethyl alcohol, vinous or spirituous liquor in quantities now permitted by Federal statutes and regulations * * * shall be manufactured, sold, prescribed, or dispensed for medicinal purposes.'

Copy of said Section 6212-15a is enclosed.

The quantities of spirituous liquor permitted by federal statutes and regulations promulgated thereunder at the time said Senate Bill No. 9 was passed will be found in the third sentence in Section 7 of Title II of the National Prohibition Act, copy of which is enclosed, and which reads:

'Not more than a pint of spirituous liquors to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once.'

The Act of Congress relating to the prescribing of medicinal liquor approved March 31, 1933, copy enclosed, provides in Section 1 of said Act as follows:

'No more liquor shall be prescribed to any person than is necessary to supply his medicinal needs and no prescription shall be refilled.'

It is obvious that this amendment removes the restriction of one pint of liquor to one person within any period of ten days provided in said Section 7 of the National Prohibition Act, and it is equally obvious that the legislature of Ohio intended to remove the restriction of one-half pint within a period of ten days as provided in said Section 6212-15a of the General Code.

The point we wish to be advised upon, does Senate Bill No. 9 restrict the prescribing of medicinal liquor by physicians in the state of Ohio to one pint within any period of ten days to one person as provided in Section 7 of the National Prohibition Act and regulations promulgated thereunder or does said Bill remove the restrictions provided therein and permit physicians holding permit for prescribing to prescribe medicinal liquor without numerical limitation, as authorized by said Act of Congress approved March 31, 1933. In other words, does the

Bill refer to the federal statutes in relation to prescribing medicinal liquor in force at the time of its passing or does it refer to subsequent legislation by Congress on the same subject.

In view of the fact that this office has many inquiries from physicians, wholesale and retail druggists in Ohio and from manufacturers of intoxicating liquor without the state as to the construction of this law, an early opinion from you will be greatly appreciated in order that we may officially advise such inquirers."

Amended Senate Bill No. 9, referred to in your communication, was passed by the 90th General Assembly of Ohio on March 9, 1933, approved by the Governor on March 15, 1933, and filed in the office of the Secretary of State on March 16, 1933.

As you point out, Section 6212-15a, General Code, was amended in said bill, the words "of one-half pint in any period of ten days" being replaced by the words "now permitted by federal statutes and regulations."

The sole question which you present is the meaning to be ascribed to the word "now" as used in Amended Senate Bill No. 9, that is to say, does this word refer to the time of the enactment or to the time of the effective date of the act? This question must be answered by a consideration of whether or not the statute speaks from the time of its passage or from its effective date.

It is a well established principle of law that a statute speaks as of the date it becomes effective in the absence of any language clearly disclosing a contrary intent. It is stated in Lewis' Sutherland Statutory Construction, Vol. I, 2nd Ed., pp. 324, 325:

"An act speaks from the time it takes effect. The words 'heretofore' and 'hereafter' in an act are construed as having reference to the date of taking effect and not to the date of passage, unless the act itself plainly shows a contrary intent. The supreme court of Texas says: 'We apprehend that no universal rule of construction can be adopted when a statute which makes a distinction between future and past transactions is passed upon one day to take effect upon another, but we think *the general rule is that a statute speaks from the time it becomes a law, and that what has occurred between the date of its passage and the time it took effect is deemed with respect to the statute a past transaction.*"

(Italics the writer's.)

Applying this rule as laid down by the Supreme Court of Texas, it would clearly appear that in so far as Amended Senate Bill No. 9 is concerned, the Act of Congress removing the one pint restriction would be deemed to be a past transaction. This rule of statutory construction is also set forth in 59 C. J. 1137, 1138, as follows:

"The general rule is that a statute speaks from the time it goes into effect and not otherwise, whether that time be the day of its enactment or some future day to which the power enacting the statute has postponed the time of its taking effect. The fixing of a date either by the statute itself or by constitutional provision, when a statute shall be

effective, is equivalent to a legislative declaration that the statute shall have no effect until the date designated; and since a statute not yet in effect cannot be considered by the court, the period of time intervening between its passage and its taking effect is not to be counted; *but such a statute must be construed as if passed on the day when it took effect.*" (Italics the writer's.)

There are numerous cases decided by courts of last resort of the several states in support of the foregoing principle. In *Clark* vs. *Lord,* 20 Kansas 390, the court considered a statute which provided that "all instruments of writing now copied", etc. This act was passed February 20, 1868, and notwithstanding this fact it was held that the word "now" referred to the time when the act regulating conveyances of real estate took effect in the subsequent October. This case was referred to and followed by the Supreme Court of Missouri in *City of St. Louis* vs. *Dorr,* 41 S. W. 1094, 1097. Again in *State, ex rel.* vs. *Mayor and Com'rs of City of Lawrence,* 165 Pac. 826, the Supreme Court of Kansas in a case decided June 9, 1917, followed this same rule of statutory construction, the syllabus being as follows:

"A title to an act which describes it as authorizing cities of a certain class 'now' owning a system of waterworks to issue bonds for their extension is broad enough to cover a provision for the issuance of such bonds by cities which owned no waterworks at the time of the enactment, but which acquired them thereafter."

In a later case of the Supreme Court of Missouri, decided April 6, 1922, being *State* vs. *Bockelman,* 240 S. W. 209, the third branch of the syllabus is as follows:

"A statute which is to take effect in the future speaks from the date it becomes effective, and not from the date of its enactment."

In the opinion of the court, it is said:

"We think, as said by Judge Christiancy, that, when a law is to become effective upon a given date, it is as if the law was passed upon that date, and by emergency clause given immediate effect. If such be the situation, we must consider the language of the law as if it was used upon the day the law became effective. In such laws the Legislature is speaking in future. It speaks as of the date the law becomes effective, and not as of the date of its passage. If the law in question so speaks, there is little trouble to give meaning to its words."

In *Charles* vs. *Lamberson,* 1 Clark (Iowa) 442, 63 Am. Dec. 457, the court had under consideration a statute enacted for the protection of homesteads which made them liable for debts contracted prior to its passage, which act was held to mean, prior to its taking effect, although that period was some time after its enactment. In the case of *Rice* vs. *Ruddiman,* 10 Mich. 135, the court said:

"It is very clear the act did not take effect till 90 days after the end of the session. But we do not think the act was therefore void as to the election provided for. It took effect in May, 1859, and must be under-

stood as beginning to speak at the moment when it became a law, and not before. It must have the same construction as if passed on the day when it took effect and directed by a two-thirds vote to take immediate effect. 'April next' must therefore be understood as April, 1860, being the next April after the act took effect."

This case was followed by Cooley, J., in *Price* vs. *Hopkins,* 13 Mich. loc. cit. 327.

In the Illinois case of *People* vs. *Mottinger,* 74 N. E. 150, 152, the Supreme Court said:

"The question therefore arises, what is the signification to be given to the language found in said section that all money necessary for the purposes mentioned in said section 1 'shall be raised as now provided by law'? We think by the words 'now provided by law' the Legislature referred to the law in force providing for the raising of money for school purposes in such districts at the time the act of 1893 went into effect, which law, as applied to District No. 86, was found in chapter 11 of the act of 1857."

The Indiana case of *McHale* vs. *Board of Com'rs.,* 103 N. E. 321, followed this same principle in construing language of the legislature with respect to certain licenses "now in force". The court said at p. 323:

"The term 'now in force' manifestly has reference, in the matter of time, to the time of the taking effect of the act."

Similar authorities in other jurisdictions might be cited, but the foregoing are deemed sufficient for the purposes of this opinion.

An examination of the Ohio decisions has disclosed no case which in my judgment is directly in point. There appears to be recognition, throughout the hereinabove cited decisions, of authority for the construction of a statute other than in accordance with the general rule when a contrary intent of the law making authority is clearly disclosed. There are two decisions of the Ohio Supreme Court in which, in order to give effect to the intention of the law making authority, the court has deviated from the well established rule that an act speaks only from its effective date. In *State, ex rel.* vs. *Harmon,* 87 O. S. 364, the court was confronted with a constitutional amendment providing that "judges of the circuit courts now residing in their respective districts shall be judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office", which amendment was adopted by the electors September 3, 1912, to become effective January 1, 1913. A certain judge had been elected as a judge of the circuit court at the November, 1912, election, for a term of six years from February 9, 1913. A strict construction of the word "now" as applying to the effective date of the amendment would have precluded the person elected from taking office. The court deviated from the general rule in order to give effect to what it considered to be the intention of the people in adopting the amendment. The language of the court at p. 375 is as follows:

"Counsel for the relator call attention to some of the definite provisions of the section as supporting their view. One of them is: 'judges of the circuit courts now residing in their respective districts shall be

the judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office.' *The word 'now' in this connection is properly said to refer to the first day of January,* 1913, *when the section, if ratified, was to take effect.* However that may be, and however frequently the title of judge may be applied to persons who do not hold judicial stations, it is evident that the relator could not upon that day, with regard for the technical meaning of words, be said to have been a judge of the circuit court. This was expressly decided in *State, ex rel. Savage,* vs. *Hidy, Judge,* 61 Ohio St., 549. But all the authorities admonish us that we are construing the language of the people and that we must not deny it an intended meaning because it would be technically incorrect. In view of numerous expressions used in this amendment special heed should be given to this admonition in the present consideration, for we find a number of these are used in obvious disregard of their technical meaning and some in like disregard of strict lexicology." (Italics the writer's.)

Notwithstanding the fact that the decision in the foregoing case may have required a deviation from the general rule that an act speaks only from its effective date, the court expressly approved this general principle in the language of the opinion hereinabove quoted which is italicized.

Again, in *State, ex rel.* vs. *Moore,* 124 O. S. 256, the court was compelled to deviate from the rule that an act speaks only from its effective date, in order to give effect to the intention of the legislature. An act known as the Pringle Act had been passed by the 89th General Assembly, effective July 31, 1931. Prior to July 31, the legislature passed an act known as the Marshall Bill, which would have become effective October 14, 1931. The Pringle Act repealed certain sections of the General Code with respect to motor vehicles and enacted what was known as a certificate of title act. The Marshall Bill repealed the Pringle Act and restored the old law with respect to this subject. Following the theory that an act speaks from its effective date only, there would have been an interval between the time of the effective date of the Pringle Act, July 31, 1931, and the time of the effective date of the Marshall Bill, October 14, 1931, during which the so-called certificate of title law would have been in effect in Ohio. The court was confronted with a clear legislative intention to retain the old law with respect to how title to motor vehicles shall be evidenced and gave effect to that legislative intent, holding that the later act constituted a reconsideration and nullification of the former enactment. The opinion turned upon a holding that the later act constituted a reconsideration of the former act rather than upon a holding that an act shall speak from the time of its passage. There is no expression in the per curiam opinion by Marshall, C. J., overruling the general rule approved in the Harmon case, supra. The language of the court at pp. 258, 259 is as follows:

"The situation is therefore exactly the same as if after the passage of the Pringle Act, and within the time limited therefor, a motion for reconsideration had been made and adopted. True, the Marshall Bill was not in form a motion to reconsider. The Marshall Bill was not introduced, as far as the record shows, until after the lapse of considerable time after the Pringle Bill had been signed by the Governor and filed in the office of the secretary of state. The rules of the General Assembly seem to provide that a motion to reconsider should be filed within two days after the previous question is ordered in each house.

The two-day rule is a rule of the General Assembly, not prescribed by the Constitution. Section 8 of Article II of the Constitution authorizes each house to determine its own rules of proceeding. Sections 9 and 16 prescribe certain rules which are mandatory, and a failure to observe them might be inquired into by the courts, and if it is found that the Legislature has violated the constitutional limitations it would be within the power of the court to declare the legislation invalid. The provision for reconsideration is no part of the Constitution and is therefore entirely within the control of the General Assembly. Having made the rule, it should be regarded, but a failure to regard it is not the subject-matter of judicial inquiry. It has been decided by the courts of last resort of many states, and also by the United States Supreme Court, that a legislative act will not be declared invalid for noncompliance with rules. *United States* vs. *Ballin,* 144 U. S., 1, 12 S. Ct., 507, 36 L. Ed., 321; *St. Louis & San Francisco Ry. Co.* vs. *Gill,* 54 Ark., 101, 15 S. W., 18, 11 L. R. A., 452; *Sweitzer* vs. *Territory of Oklahoma,* 5 Okl., 297, 47 P., 1094; *State* vs. *Brown,* 33 S. C., 151, 11 S. E., 641; *In re. Ryan,* 80 Wis., 414, 50 N. W., 187; *McDonald* vs. *State,* 80 Wis., 407, 50 N. W., 185.

Adopting the theory that we do—that the Marshall Bill while not in form but nevertheless in substance and effect a reconsideration and a nullification of the Pringle Bill, both as to the affirmative provisions of the Pringle Bill and as to those provisions which repealed former existing legislation—the demurrer to the petition will be sustained, and the writ denied."

In passing upon the question here under consideration, I find no indication of any intention on the part of the legislature that the act should speak from the time of its passage. In *McHale* vs. *Board of Com'rs, supra,* the court said:

"If the Legislature had intended to exempt licenses granted, but not paid for and issued, from the increase in fees, words which would clearly express that intent were as easily available as were the words which it did use. It was a simple thing, easy to state in unmistakable words."

Paraphrasing this language of the Supreme Court of Indiana, it may well be said that if the legislature had intended to provide that physicians may prescribe one pint of intoxicating liquor "words which would clearly express that intent were as easily available as the words which it did use. It was a simple thing, easy to state in unmistakable words."

Summarizing and in specific answer to your inquiry, I find no justification for departing from the well established principle laid down by the courts of Texas, Kansas, Missouri, Iowa, Michigan, Illinois and Indiana hereinabove mentioned, and as recognized by the Supreme Court of Ohio in the Harmon case, supra, and it is therefore my opinion that the words "now permitted, by federal statutes and regulations" appearing in Section 6212-15a, General Code, as amended by Amended Senate Bill No. 9 of the 90th General Assembly of Ohio, refer to federal statutes and regulations in force at the time such bill becomes effective, to wit: ninety days after said bill was filed with the Secretary of State, which date of filing was March 16, 1933.

Respectfully,
JOHN W. BRICKER,
Attorney General.