Central Railroad Company, by the hand of one R. S. Lippincott, Land and Tax Agent of the lessee company, and that the lease has been approved as to form by W. N. King, General Attorney of The New York Central Railroad Company. In this situation and by reason of the additional fact that prior leases for this purpose have been executed on behalf of the railroad company by R. S. Lippincott, and the railroad company has acted upon such leases and has availed itself of the benefits of the same, I am quite clearly of the view that the authority of R. S. Lippincott to execute this lease on behalf of the lessee above named is established. I am of the opinion therefore, that this lease has been executed in the manner required by law.

Upon consideration of the provisions of this lease and of the conditions and restrictions therein contained, I find the same to be in conformity with Sections 431 and 1409 of the General Code, and that they are not in conflict with any statutory enactment or other provision of law.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof.

Respectfully,
JOHN W. BRICKER,
Attorney General.

895.

OHIO LIQUOR CONTROL COMMISSION—MAY REVOKE PERMITS WITHOUT NOTICE AND HEARING—MAY NOT ISSUE BLANKET PERMITS TO RAILROAD FOR DINING CAR—MAY NOT ISSUE PERMIT FOR LESS THAN YEAR—PERMIT REVOCABLE FOR FALSE STATEMENTS—BEER FOR MEDICINAL PURPOSES IN HOSPITAL PERMIT NOT REQUIRED.

SYLLABUS:

1. *The Ohio Liquor Control Commission can revoke permits for any of the causes enumerated in the Ackerman-Lawrence Bill without giving permit holders notice and an opportunity to be heard.*

2. *The Ohio Liquor Control Commission has no authority to issue blanket class D permits to railroad companies so as to enable such common carriers to sell and serve beer to passengers in any and all of the dining cars that may be used and operated by such common carriers in and through Ohio. In order to sell beer on dining cars, it will be necessary for railroad companies to take out a class D permit for each separate diner used and operated in and through Ohio.*

3. *The Ohio Liquor Control Commission, under section* 11 *of Amended Substitute Senate Bill No.* 346, *has no authority to issue permits for less than one year.*

4. *The Ohio Liquor Control Commission has the power to revoke a permit because of false statements made in the application for such permit.*

5. *Under the Ackerman-Lawrence Bill, a hospital is not required to take out a permit in order, in good faith, to supply its patients with beer for medicinal purposes on the advice of the physicians of the patients.*

COLUMBUS, OHIO, May, 29, 1933.

Ohio Liquor Control Commission, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter of recent date which reads in part as follows:

> "1 (a) We should like to have your opinion as to a proper and satisfactory manner to be pursued in the matter of revocation of permits issued where permittees have violated the terms of same.
>
> (b) Whether the deliberate making of false statements in the application, which is sworn to, be grounds for revocation?
>
> 2. May blanket permits D be issued to railroad companies operating dining car businesses in Ohio or shall each dining car be covered with a special permit?
>
> 3. When hospitals serve beer under the advice and direction of a physician and for which the patient pays, should there be required a permit?
>
> 4. May the Commission issue permits for less than one year? This question covers specific situations such as 'lawn fetes', Lodge Picnics, Concessions at County Fairs and the like."

The following sections in Amended Substitute Senate Bill No. 346 are pertinent to your inquiry. Section 4 reads in part as follows:

> "* * * It may grant and rescind licenses for the manufacture, distribution and sale of beer at wholesale or retail, including beer manufactured outside of the state of Ohio. * * * It may fix standards to insure the use of proper ingredients and methods in the manufacture of beer to be licensed for sale within the state and may withhold or rescind licenses to manufacture where such standards are not met. * * *."

Section 5 provides that:

> "It shall be the duty of the commission to inspect or have inspections made of the premises of permit holders, and if it be found that the permit holder is violating or is failing to observe in good faith any of the provisions of this act, or any of the rules or regulations of the commission promulgated under the provisions of this act, or is permitting such premises to be used for unlawful, disorderly or immoral purposes, such license shall be revoked."

Section 11 provides in part:

> "The commission shall formulate rules and regulations with reference to applications for, and the issuance of, permits and may issue the following permits:
>
> * * * * * * * * *
>
> Permit D: * * * The Commission shall adopt and promulgate rules and regulations which shall require that public decency, sobriety, and good order shall at all times be observed in any place licensed under

permit D, and shall promptly rescind the permit for any location where these rules and regulations are not strictly observed. * * *."

Section 13 reads:

"No person, firm or corporation theretofore convicted of trafficking, manufacturing or selling in violation of the state or federal prohibition laws or of any felony, shall receive or be permitted to retain a permit to manufacture or sell or distribute, nor shall such person, firm or corporation have an interest directly or indirectly in a permit to manufacture, sell or distribute, beverages permitted to be sold under this act."

Section 23 provides:

"Any person, firm, or corporation, or his or its employee or agent, who violates any of the provisions of this act or who manufactures for sale, distributes or sells, without first obtaining a permit or who sells any beverage upon which the tax provided for by this act has not been paid, shall be deemed guilty of a misdemeanor and upon conviction shall forfeit any permit granted to him, or it, by the commission and shall be fined not less than one hundred ($100.00) dollars nor more than one thousand ($1,000.00) dollars or be imprisoned not less than thirty (30) days nor more than six (6) months, or both."

It is evident on a reading of the sections quoted herein that the legislature has invested the Ohio Liquor Control Commission with power to revoke permits for the manufacture, distribution and sale of beer in Ohio, under certain circumstances and upon the happening of certain events. However, the act contains no provision requiring or providing that the holders of permits be given notice and an opportunity to be heard in the matter of the revocation of permits. In other words, the Ackerman-Lawrence Bill is silent as to the necessity of giving notice and a hearing to a permittee on the revocation of a permit. Likewise, there is no general law which confers upon the Ohio Liquor Control Commission power or authority to grant hearings to persons whose permits are to be revoked.

In view of the fact that the legislature has expressly conferred upon the Ohio Liquor Control Commission the power to revoke permits for the causes outlined in the act, without requiring that a permittee be given notice or a hearing, the question arises as to whether the revocation of a permit in that manner is violative of the due process of law clause in the Constitutions of the United States and of the State of Ohio. The words "license" and "permit" are synonymous and are often used interchangeably in statutes and ordinances. See 37 C. J. 167. A license has been defined by the Supreme Court of Ohio in *State* vs. *Hipp,* 38 O. S. 199, as "a permission granted by some competent authority to do some act which without such permission would be illegal." There are many courts in this country which hold that a license is in no sense a contract, a vested property right or property, but is merely a privilege issued by the sovereignty in the exercise of its police power to do that which otherwise would be prohibited. See *People, ex rel, Lodes,* vs. *Health Department,* 189 N. Y. 187; *Burgess* vs. *Brockton,* 235 Mass. 95; and *State, ex rel. Orleans Athletic Club, et al.,* vs. *Boxing Commission,* 112 So. 31 (La.) The rule is stated in 37 C. J. 168 as follows:

> "A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right, nor is it taxation."

See also *Child* vs. *Bemus,* 17 R. I. 230; *State* vs. *Pulsifer,* 152 Atl. 711 (Me.); *Voight* vs. *Excise Commissioners,* 37 L. R. A. 292 (N. J.); *Metropolitan Board of Excise* vs. *Wright,* 34 N. Y. 667; *La Croix* vs. *County Commissioners,* 49 Conn. 591; and *Cofman* vs. *Outerhaus,* 18 A. L. R. 219 (N. D.).

It is also a general rule of law that a license issued to carry on a business that without such license would be unlawful under a statute which authorizes the revocation of such license and which is silent as to notice and hearing may be revoked without giving the licensee notice or an opportunity to be heard. The rule of law is stated in 37 C. J. 246 as follows:

> "It is generally held or provided under the various license acts and ordinances, or expressly stipulated in the license itself, that a license may be revoked for due cause at any time by the licensing authorities; and, since a license is a mere privilege, and neither a contract nor a property or vested right, a statute or ordinance authorizing or providing for its revocation does not violate constitutional provisions, as depriving the licensee of property, immunity, or a privilege."

The rule is likewise stated in McQuillan on Municipal Corporations, 2nd Ed., Vol. III, p. 499:

> "Before revocation in the absence of statutory or charter requirement, there is no necessity for notice or an opportunity to be heard, since the revocation of a license is an administrative act."

In the case of *People* vs. *Bemus, supra,* it was held that:

> "The fact that the license may be revoked without notice to the licensee or hearing does not make the ordinance void."

The Supreme Court of New York in the case of *People, ex rel. Lode,* vs. *Health Department, supra,* held that no constitutional rights were impaired by the revocation of a license to sell milk without notice or hearing to the licensee. In the case of *Burgess* vs. *Brockton, supra,* the revocation of a license to operate a bus without notice and hearing to the licensee was upheld as valid, the court holding that, where notice or hearing is not required by the terms of a statute or ordinance which provides for the revocation of licenses, the rights of a licensee may be cut off by revocation without notice or hearing. The revocation of a license to sell liquor made without notice or hearing to the licensee was sustained in *Wallace* vs. *Mayor, etc.,* 63 L. R. A. 337 (Nev.). The fact that the business of manufacturing, distributing and selling beer is one which may be harmful to the public health, safety and welfare, if not properly regulated and controlled, makes the privilege to engage therein in Ohio one which can be revoked without notice or hearing, inasmuch as the permits issued by the Ohio Liquor Control Commission, by virtue of the provisions of the Ackerman-Lawrence Bill, are in no sense contracts or property but mere privileges to engage in the business of making or selling beer of a certain alcoholic content. There

is express provision in the act that the permits granted by the Commission shall be revocable and, since there is no language in the act which suggests that any notice or hearing be given permit holders prior to revocation, it is my opinion that none is necessary. Thus, whenever the Ohio Liquor Control Commission finds that a permittee has violated either the provisions of the Ackerman-Lawrence Bill or the rules and regulations promulgated by the Commission, the Commission can revoke the permit without giving notice or a hearing to such permittee. However, a revocation of a permit by the Commission can be only for the causes set forth in the Ackerman-Lawrence Bill or for the violation of rules and regulations promulgated by the Commission.

Your next question is whether the Ohio Liquor Control Commission can revoke a permit because of false statements made in the application for such permit. It is a cardinal rule of law that a license obtained by fraud may be revoked on the theory that the same is void *ab initio*. The rule of law in reference to revocation of permits for fraud is stated in 33 C. J. 565 as follows:

> "A license may be revoked for fraud practiced upon the licensing officers in obtaining it, as where the application for license contained material false statements or false representations, or a materially erroneous or false description of the premises intended to be licensed," etc.

In view of that statement of law, the conclusion is irresistible that false statements made in an application for a permit constitute sufficient cause for revocation thereof.

Your second question is whether the Ohio Liquor Control Commission can issue blanket class D permits to railroads so as to permit the sale of beer on dining cars. The fee for these blanket permits is to be based on the maximum number of diners that are generally used in Ohio in the usual course of the railroad's business. Under a blanket class D permit, the railroads would be able to use any diner car in the carriers' rolling stock and would not be limited to particular dining cars which, by the nature of the business, are not at all times available for use in Ohio. There is no provision in the act which authorizes the issuance of blanket class D permits to railroads so as to enable the railroads to sell beer on any of their diners operated in or through Ohio. Section 11, relating to the issuance of class D permits for the sale of beer for consumption on the premises, 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 D: A permit to the owner or operator of a hotel, restaurant, club or amusement park to sell beer at retail either in glass or bottle for consumption on the premises where sold and at tables only. The permit fee shall be one hundred dollars ($100.00) per year for each location. The commission may formulate and enforce rules and regulations with reference to the time and manner of sale by such permit holders and with reference to the location of, furnishing of, and access to, the place of sale. The commission may also require from the permit holder detailed information under oath before or after issuing the permit, as to the character of business conducted, the financial responsibility and

record of the applicant or permit holder and the name or names of any person, firm or corporation other than the named applicant or permit holder having any financial interest in said application or permit. The commission shall adopt and promulgate rules and regulations which shall require that public decency, sobriety, and good order shall at all times be observed in any place licensed under permit D, and shall promptly rescind the permit for any location where these rules and regulations are not strictly observed."

It will be observed from a reading of that section that a class D permit is issued for *each location* in which beer is to be sold and consumed thereon. It will also be noted that the legislature, in providing for the revocation of a class D permit, used the phrases "in *any place licensed* under permit D" and "the permit *for any location*". From a reading of that section, it is quite clear that the legislature intended that a class D permit be required for each separate place where beer is sold at retail and consumed on the premises. In view of the legislative intent that a permittee be required to take out a separate license for each place of business, the Commission would not be authorized to issue blanket class D permits to railroads so as to enable such common carriers to sell beer to passengers in any and all of their dining cars used in the transportation system in this state.

A reading of the Ackerman-Lawrence Bill discloses that it was the intention of the legislature to control and regulate the business of manufacturing and selling beer in Ohio and to require permits only from those engaged in that business. There is no provision in that law which requires that a hospital take out a permit to sell beer where, in the usual course and pursuit of its business and incidental thereto, it furnishes and serves beer to patients on the advice and order of physicians of the patients so served. In other words, under the Ackerman-Lawrence Bill, a hospital is not required to take out a permit to sell beer in order, in good faith, to supply its patients with beer for medicinal purposes on the advice of the physicians of the patients.

Your fourth question must be answered in the negative, inasmuch as there is no provision in section 11 or elsewhere in the Ackerman-Lawrence Bill which authorizes the Commission to issue permits for less than one year. Section 11 reads in part as follows:

"* * * * * * * * *

Permit A: * * * 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: * * * 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.

* * * * * * * * *

Permit C: * * * The *permit fee* shall be fifty dollars ($50.00) *per year* for each location. * * *

Permit D: * * * The *permit fee* shall be one hundred dollars ($100.00) *per year* for each location. * * * All fees paid by permit holders of A, B, C, or D permits shall be paid as follows:

1. Initial fee when permit is issued.

* * * * * * * * *"

(Italics the writer's.)

Specifically answering your inquiry, I am of the opinion that:

1. The Ohio Liquor Control Commission can revoke permits for any of the causes enumerated in the Ackerman-Lawrence Bill without giving permit holders notice and an opportunity to be heard.

2. The Ohio Liquor Control Commission has no authority to issue blanket class D permits to railroad companies so as to enable such common carriers to sell and serve beer to passengers in any and all of the dining cars that may be used and operated by such common carriers in and through Ohio. In order to sell beer on dining cars, it will be necessary for railroad companies to take out a class D permit for each separate diner used and operated in and through Ohio.

3. The Ohio Liquor Control Commission, under section 11 of Amended Substitute Senate Bill No. 346, has no authority to issue permits for less than one year.

4. The Ohio Liquor Control Commission has the power to revoke a permit because of false statements made in the application for such permit.

5. Under the Ackerman-Lawrence Bill, a hospital is not required to take out a permit in order, in good faith, to supply its patients with beer for medicinal purposes on the advice of the physicians of the patients.

Respectfully,
JOHN W. BRICKER,
Attorney General.

896.

DIRECTOR OF EDUCATION—MAY NOT BE COMPENSATED FOR ADDRESSES AT EDUCATIONAL GATHERINGS BY SCHOOL DISTRICT —EXCEPTION AS TO ASSISTANT DIRECTOR AND DIRECTORS OF OTHER ADMINISTRATIVE DEPARTMENTS — ILLEGAL EXPENDITURE OF PUBLIC FUNDS SUBJECT TO FINDING FOR RECOVERY.

SYLLABUS:

1. *The Director of Education may not legally receive compensation from the school funds of a school district or from the county board of education fund, for making addresses at school commencements or teachers' institutes or other educational gatherings.*

2. *The Assistant Director of Education and the Chiefs of the Division of Examination and Licensing and Film Censorship within the Department of Education may legally receive compensation from a county board of education fund or from the funds of a city school district, as the case may be, for making ad-*