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PERMIT—SECTION 6064-15 G. C. DOES NOT REQUIRE A CLUB, AMUSEMENT PARK, DRUG STORE, BOAT OR VESSEL TO SERVE FOOD BEFORE OBTAINING A D-1 PERMIT.

SYLLABUS:

Section 6064-15, General Code, does not require a club, amusement park, drug store, boat or vessel to serve food before obtaining a D-1 permit.

Columbus, Ohio, February 14, 1950

Hon. Harry J. Callan, Fire Marshal, Division of State Fire Marshal
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A question has been raised in regard to the relationship of G. C. Sec. 843-2 (Restaurant defined), which is administered by the Division of State Fire Marshal, and Permit D-1 of G. C. Sec. 6064-15, administered by the Department of Liquor Control.

“G. C. Sec. 843-2. ‘Every building or other structure kept, used, maintained, advertised or held out to the public to be a place where meals or lunches are served for consideration, without sleeping accommodations, shall, for the purpose of this Act, be defined to be a restaurant.’

“G. C. Sec. 6064-15. Permit D-1: ‘A permit to the owner or operator of a hotel or restaurant licensed pursuant to section 843-2 of the General Code, or of a CLUB, AMUSEMENT PARK, DRUG STORE, LUNCH STAND, BOAT OR VESSEL, to sell beer at retail either in glass or container, for consumption on the premises where sold; and to sell beer at retail in other receptacles or in original packages containing not less than one container and in total quantities at each sale of not more than one hundred and twenty-eight fluid ounces and not for consumption on the premises where sold. The fee for this permit shall be one hundred dollars for each location, boat or vessel.’

“G. C. Sec. 6064-15. Permit D-2: * * * ‘Only at tables where meals are served * * *.’

“The phrase in Permit D-2, ‘Only at tables where meals are served’ would seem to require the serving of food for that type of permit.

“My question specifically is: Are any one or more of the establishments — CLUB, AMUSEMENT PARK, DRUG STORE, LUNCH STAND, BOAT OR VESSEL—named in Permit D-1, G. C. 6064-15 required to serve food in order to operate under this type of permit?

“I believe your opinion on this matter will provide the Fire Marshal’s office with a more definite understanding of this subject.”

Examination of the portion of Section 6064-15, General Code, which deals with D-1 permits reveals that D-1 permits may be issued to any hotel or restaurant which is licensed pursuant to Section 843-2, General Code, which you have quoted in your request. Section 6064-15, General Code, then goes on to say “*or* of a club, amusement park, drug store, lunch stand, boat or vessel.” I believe this is a definite indication that the legislature did not intend that these types of establishments should be required to serve food before D-1 permits were issued. It goes without saying, of course, if a club, lunch stand or any of the rest does serve food that they should be required to have a restaurant license. The legislature could have easily said that anyone who desired a D-1 permit would be required to serve food or lunches. However, the wording of the statute leads me to believe that they did not so intend. The statute was very likely worded thusly as a safeguard. That is, it would prevent fly-by-night organizations from springing up and calling themselves hotels and restaurants merely for the purpose of obtaining D-1 liquor permits. There is no indication in the statute that the legislature intended that every D-1 permit holder should be required to serve food before acquiring such a permit. In the absence of such intent, it is my opinion that it is not necessary that a club, amusement park, drug store, boat or vessel serve food in order to operate under a D-1 permit as defined in Section 6064-15, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.