

1132.

LIQUOR CONTROL ACT—ISSUANCE OF PERMITS—BOARD  
OF LIQUOR CONTROL MAY NOT CANCEL PERMITS,  
WHEN.

*SYLLABUS:*

1. *There is nothing in the Liquor Control Act, Sections 6064-1, et seq., General Code, or the regulations of the Board of Liquor Control which prohibits the issuance of a second permit to the holder of an unexpired permit of the same class and for the same location.*

2. *The Department of Liquor Control does not have the power to cancel permits as such power is specifically vested in the Board of Liquor Control under the provisions of Section 6064-3, subsection 1, paragraph (k).*

COLUMBUS, OHIO, September 10, 1937.

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

DEAR SIR: I have your recent request for my opinion as follows:

“The B. Brewing Company is the holder of an A-1 permit issued by this department prior to May 20, 1937. Under an opinion of your office this company must pay an excess permit fee of five cents a barrel for all beer and malt beverages manufactured in excess of five thousand (5000) barrels during the year covered by its permit. This excess permit fee is not applicable to A-1 permit holders whose permits were issued after May 20, 1937.

The B. Brewing Company has filed an application for another A-1 permit with the intention of submitting their present permit to this department for cancellation if and when this new permit is issued.

May we have your official opinion on the following questions:

1. May this department issue the B. Brewing Company a second A-1 permit while they have an existing A-1 permit?
2. Has this department the right to cancel the present permit of the B. Brewing Company if requested by them to do so?”

The portion of Section 6064-15 which pertains to A-1 permits reads as follows:

“Permit A-1: A permit to a manufacturer to manufacture beer, ale, stout and other malt liquor containing not more than seven percentum of alcohol by weight and sell such products in bottles or containers for home use and to retail and wholesale permit holders under such regulations as may be promulgated by the department. The fee for this permit shall be one thousand dollars for each plant during the year covered by the permit.”

Section 6064-8 as amended in Amended House Bill No. 501 provides inter alia, that the Department of Liquor Control has power “to grant or refuse permits for the manufacture, distribution, transportation and sale of beer and intoxicating liquor and the sale of alcohol, as authorized or required by this act. \* \* \*”

There is no provision in the other portions of the Liquor Control Act, Sections 6064-1, et seq., General Code, which limits the power of the Department of Liquor Control in respect to the issuance of a second permit to the holder of an unexpired permit of the same class. It is true that Section 6460-20, General Code, provides that each permit shall cover only one location and it might be argued that this implies that each location shall operate under only one permit of each class. Sections may not be expanded by implication recklessly and only those things may be implied which are necessary to make the statute effective or to attain the purpose thereof. Lewis' Sutherland Statutory Construction, 2nd Ed. Vol. 2, page 942. In this case it cannot be said that the above suggested implication is necessary for the proper administration of Section 6064-20, General Code.

Since Section 6064-3, subsection 1 (b) provides that the Board of Liquor Control may pass regulations with reference to the issuance of permits, it is necessary to examine the regulations of the Board in this regard. However, such examination fails to reveal any prohibition against the issuance of a second permit in such case. Therefore it is my opinion that the Department of Liquor Control may issue a second A-1 permit to the B. Brewing Company, notwithstanding the fact that said Company has an existing A-1 permit, provided, of course, that the said company's application reveals that it is qualified in all other particulars to receive a permit.

Your second question concerns the right of the Department to cancel a permit upon the voluntary surrender of the permit by the permit holder. Section 6064-8, before amendment by Amended House

Bill No. 501, enacted by the 92nd General Assembly, provided that the Department of Liquor Control shall have the following powers in relation to permits:

*“To grant, refuse, suspend, revoke and cancel permits,  
\* \* \*”*

These powers of the Department were modified by Amended House Bill No. 501 so that the pertinent part of this provision now reads:

*“To grant or refuse permits \* \* \*.”* (Italics ours).

It is generally said that a grant of power by the legislature includes by implication all lesser powers directly related and incidental thereto. Lewis' Sutherland Statutory Construction, Vol. 2, page 942-949, and it might be urged that the power to cancel permits upon voluntary surrender is a necessary power to carry out the regulatory purposes of the Liquor Control Act. However, inasmuch as the legislature has specifically taken away the power of cancellation from the Department, such power cannot be conferred upon the Department by implication. It is but a natural corollary of the well accepted rule of statutory construction that a statute should be so interpreted as to give every word an independent meaning, (*Turley vs. Turley*, 11. O.S. 173, 179; Lewis' Sutherland Statutory Construction, Vol. 2, page 732) to say that the deletion of a word by amendment to a statute must likewise be given an independent operation, as stated in 37 O.J. 769:

*“\* \* \* Accordingly, the presumption is that every amendment of a statute is made to effect some purpose. \* \* \*”*

I am not unmindful of the following provision in Section 6064-37, which relates to local option elections:

*“\* \* \* \* \* \* \* \* \*”*

In case, as the result of such election, the use of a permit shall be made wholly unlawful, the department shall forthwith cancel such permit and shall seize any and all beer, intoxicating liquor or alcohol which it may find on the premises covered by the permit or in the possession of the holder thereof. \* \* \*

It is quite obvious that this is a specific provision empowering the Department to cancel permits only in cases where necessary to carry out the result of a local option election and does not authorize the Department to cancel in other instances.

It might be argued that Section 6064-3, subsection 1(b), recognizes the right of the Department to cancel permits. This provision reads as follows:

“The Board of Liquor Control shall have power:

1. To adopt and promulgate, repeal, rescind, and amend, in the manner herein required, rules, regulations, standards, requirements, and orders, necessary to carry out the provisions of this act, including the follow:

\* \* \*

\* \* \*

\* \* \*

(b) Rules and regulations with reference to applications for and the issuance of permits, for the manufacture, distribution, transportation, and sale of beer and intoxicating liquor, and the sale of alcohol, subject to the provisions of this act; *and governing the procedure of the department in the suspension, revocation, and cancellation of such permits.* (Italics ours).

The Board has authority under this provision to enact regulations “governing the *procedure* of the Department in the suspension, revocation and cancellation of permits.” When a permit is ordered suspended, revoked or canceled by the Board, several things must be done to carry the Board’s order into effect. These administrative functions include, among other things, the following: The deposit of the permits with the Department; the disposition of merchandise owned by the permittee before suspension, revocation or cancellation; and the return of a permit to the permit holder upon the termination of a suspension. In my opinion the provision in Section 6064-3 above quoted, does not operate to give the Department powers which the legislature has seen fit to take away from the Department in the amendment to Section 6064-8 contained in Amended House Bill No. 501, but merely empowers the Board to regulate the procedure which the Department shall follow in carrying out the Board’s orders.

The respective jurisdictions of the Board of Liquor Control and the Department of Liquor Control are not overlapping. In Sections 6064-3 and 6064-8 the legislature clearly indicates its intention that each have separate functions. Section 6064-3, subsection 1, paragraph (k) provides that the Board of Liquor Control has power “to suspend, revoke and cancel permits.” This provision strengthens my conclusion as aforesaid that the Department of Liquor Control does not have power to cancel the permits on voluntary surrender.

The matter presented in your inquiry, from an administrative viewpoint, is really an entity though it involves two separate legal problems. There are many reasons why as a matter of policy the Department might not deem it advisable to have two permits of the same class held by one permit holder, but this difficulty could be circumvented by the Department refusing to issue the second permit unless and until the applicant has applied to the Board for cancellation of the first permit.

In specific answer to your questions therefore, it my opinion that:

1. The Department of Liquor Control may issue a second A-1 permit to the B. Brewing Company although said Company is the possessor of an existing A-1 permit.

2. The Department of Liquor Control does not have the right to cancel the permit of the B. Brewing Company upon a voluntary surrender of said permit.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

1133.

APPROVAL—CONTRACT BETWEEN THE STATE OF OHIO  
ON BEHALF OF MIAMI UNIVERSITY, OXFORD, OHIO,  
AND FRANK HELTER OF OXFORD, OHIO, FOR FURNISHING  
WATER SOFTENER.

COLUMBUS, OHIO, September 11, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works on behalf of Miami University, Oxford, Ohio, and Frank Halter, Oxford, Ohio, for the furnishing of Water Softener, which contract calls for a total expenditure of nine hundred and eighty-six and 50/100 dollars (\$986.50).

You have also submitted proof of publication, the recommendation of the State Architect and Engineer to the University and the direction of the Board of Trustees of Miami University to the Director of Public Works to enter into contracts, the approval of the P.W.A. in Ohio, the tabulation of bids and the certificate of the availability of funds certified by the Secretary of the Board of Trustees of Miami University.