

state of Ohio by fee simple title with a covenant of warranty that this property is free and clear of all encumbrances whatsoever. Said warranty deed is accordingly hereby approved by me.

Upon examination of contract encumbrance record No. 23, which has been submitted as a part of the files relating to the purchase of the above described tract of land, I find that this instrument has been properly executed and that there is shown to be a sufficient unencumbered balance in the appropriation account to pay the purchase price of this property, which purchase price is the sum of \$1200.00.

It further appears, from a recital contained in said contract encumbrance record, as well as from the certification from the Controlling Board, that the purchase of this property has been approved by the Controlling Board and that it has released from the appropriation account the money necessary to pay the purchase price of the property in the amount above stated.

I am herewith returning, with my approval, said corrected abstract of title, warranty deed, contract encumbrance record No. 23 and Controlling Board certificate.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3930.

LIQUOR CONTROL ACT — "CONTRACT CARRIER" DEFINED AS USED THEREIN—H PERMITS MAY BE ISSUED ONLY TO COMMON AND CONTRACT CARRIERS.

SYLLABUS:

The term "contract carrier" as used in sections 6064-1 and 6064-15, General Code, means any person not a public or common carrier, engaged in the business of transporting for hire beer or intoxicating liquor, and does not include within its term manufacturers or wholesale distributors of beer who transport and deliver their own products to their customers by their own trucks as an incident in the sale of such beverages. Under sections 6064-1 and 6064-15, General Code, the Department of Liquor Control can issue H permits to common and contract carriers only, and the Department has no authority to issue an H permit to a manufacturer of beer who delivers or transports such beverage by his own motor vehicles to his customers.

COLUMBUS, OHIO, February 9, 1935.

HON. WELLINGTON T. LEONARD, *Chairman, Board of Liquor Control, Columbus, Ohio.*

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

"The Board of Liquor Control respectfully requests the opinion of the Attorney General as to whether or not the term 'contract carrier' as used in Section 1 of the Liquor Control Act includes brewers, manufacturers or importers of beer, intoxicating liquor or alcohol when such liquor, alcohol or beer is transported in trucks or other vehicles owned by the said manufacturer, brewer or importer. The Board is particularly interested in having your opinion in connection with transportation into Ohio by brewers and manufacturers located outside the State of Ohio."

The transportation and importation of beer and intoxicating liquor for use and delivery in Ohio is regulated by sections 14, 15 and 55 of the Liquor Control Act (section 6064-1, et seq., General Code). Section 6064-14 reads in part:

"No person shall directly or indirectly, himself or by his clerk, agent, or employe, * * * transport or import any beer or intoxicating liquor or alcohol in or into this state for delivery or use herein, unless such person shall have fully complied with the provisions of this act and shall be the holder of a permit issued by the department of liquor control and in force at the time."

Section 6064-15 provides in part:

"The following classes of permits may be issued:

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Permit H: A permit to a common carrier or a contract carrier to transport or import beer, intoxicating liquor or alcohol or any or all of them, in this state, for delivery or use in this state. The fee for this permit shall be five dollars."

Section 6064-55 reads:

"Whoever, not being the holder of a class H permit, transports or imports beer, intoxicating liquor or alcohol, or any of them, in this state, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than thirty days nor more than six months, or both. This section shall not apply to the transportation and delivery of beer or intoxicating liquor purchased or to be purchased from the holder of a permit issued by the department of liquor control, in force at the time, and authorizing the sale and delivery of the beer or intoxicating liquor so transported, nor of beer, intoxicating liquor or alcohol purchased from the department of liquor control or the tax commission of Ohio."

That section makes it a misdemeanor for anyone not the holder of an H permit issued by the Department of Liquor Control to transport or import beer or intoxicating liquor for use or delivery in Ohio. The section further provides that the transportation and delivery of beer or intoxicating liquor purchased or to be purchased from permit holders in Ohio who are authorized to sell and deliver such beverages, or from the Department of Liquor Control, or the Tax Commission of Ohio, is not subject to the provisions of section 6064-55. In other words, persons who are authorized by the Department of Liquor Control to engage in the various phases of the liquor traffic either as manufacturers or as wholesale distributors of beer and wine, can transport and deliver their products to the persons to whom they are authorized by law to sell their products, without transporting the same by the holder of an H permit or securing for themselves an H permit in order to transport such beverages in Ohio. Likewise, a person purchasing beer or intoxicating liquor from the Department of Liquor Control or the Tax Commission is not required to secure a permit to transport in Ohio the beverages so purchased. A reading of section 6064-55 clearly establishes the fact that the exemption therein contained is applicable only to persons who are licensed by the State of Ohio to engage in the manufacture and sale of beer and intoxicating liquor in this state and that it was not the intention of the legislature to allow persons en-

gaged in similar business activities outside of Ohio to enjoy the same privilege to transport and deliver their products in Ohio as granted by the legislature to the licensees in this state.

The next question to be determined is whether a manufacturer of beer or intoxicating liquor outside of Ohio can qualify for an H permit as a contract carrier when such manufacturer imports, transports and delivers its own product in its trucks to customers in Ohio. Section 6064-15 authorizes the Department of Liquor Control to issue an H permit either to a common or contract carrier. The term "contract carrier" is defined in section 6064-1, General Code, as follows:

"The term 'contract carrier' includes all persons transporting intoxicating liquor or alcohol belonging to or consigned to others or intended for sale to others, otherwise than as common carriers."

The term "contract carrier" itself indicates that the service of such a carrier is the result of a contract between two or more persons to do some express and definite thing with reference to the transportation for hire of beer and intoxicating liquor. It is difficult to perceive that a manufacturer of beer delivering and transporting its beer in its trucks to its customers could be a contract carrier within the meaning of that term, since the issuance of H permits was no doubt intended for persons who make it a business to transport or deliver goods for hire.

That the legislature intended that an H permit be issued only to persons engaged in the business of transporting for hire beer and intoxicating liquor, is clearly evident from the use of the phrases "contract carrier" and "common carrier" in sections 6064-1 and 6064-15, General Code. The term "carrier," as generally understood, refers to persons engaged in the business of transporting goods or persons for hire. The term is defined in 10 C. J., 37, as follows:

"A carrier is one that undertakes the transportation of persons or movable property, and the authorities, both elementary and judicial, recognize two kinds or classes of carriers, namely, private carriers and common carriers. A private carrier is one who, without being engaged in such business as a public employment, undertakes to deliver goods in a particular case for hire or reward. While a common carrier has been defined as one that holds itself out to the public to carry persons or freight for hire, the term did not, at the common law, embrace a carrier of passengers, and is commonly confined to carriers of goods, as distinguished from common carriers of passengers. A common carrier differs from a private carrier in two important respects: (1) In respect of duty, it being obliged by law to undertake the charge of transportation, which none but a common carrier, without a special agreement, is. (2) In respect of risk, the former being regarded by the law as an insurer, the latter being liable like ordinary bailees."

The phrase "contract carrier," as used in sections 6064-1 and 6064-15, is synonymous with the term "private carrier," as defined in 10 C. J., 37, and is used in the Liquor Control Act to distinguish between a public or common carrier and a private or contract carrier. The phrase "public or common carrier" is generally recognized as referring to persons or companies who undertake to provide for the public at large, transportation for persons, property or both for hire, instead of restricting its business to a particular person or persons, as does a contract or private carrier. The legislature has indicated that the term "contract carrier" was to include only those persons who

haul or transport for hire the goods or wares of another under a contract and who do not engage in the business of transportation for hire of goods or persons for the public generally. The use of the word "contract" to qualify the word "carrier" must also be given some significance, because, as stated in *The Local Telephone Company vs. Mutual Telephone Company*, 102 O. S., 524, at 530:

"To constitute a valid contract, there must be parties capable to contract, a lawful subject-matter, a sufficient consideration, and an actual agreement to do or forbear from doing some particular thing."

It therefore follows that the term "contract carrier" was not intended to apply to a person who transported his own goods or wares. In other words, a person could not be a contract carrier as the result of dealing with himself, since there would be a want of contracting parties who have for a sufficient consideration agreed to do a particular thing in reference to the transportation of goods. That the term "contract carrier" was intended by the legislature to be restricted to persons in the business of transporting goods for hire, is further supported by the fact that section 6064-1, General Code, does not read that a contract carrier shall be any person engaged in the transportation of beer or intoxicating liquor purchased or to be purchased from him in furtherance of his right to sell beer or intoxicating liquor.

From a reading of the entire Liquor Control Act, and especially sections 6064-1, 6064-15 and 6064-55, it is quite clear that the provisions of sections 6064-1 and 6064-15 relating to contract carriers, do not include within their terms persons who transport and deliver their own malt and vinous products in their own trucks for their own purposes or to their customers.

Specifically answering your inquiry, I am of the opinion that the term "contract carrier" as used in sections 6064-1 and 6064-15, General Code, means any person not a public or common carrier, engaged in the business of transporting for hire beer or intoxicating liquor, and does not include within its term manufacturers or wholesale distributors of beer who transport and deliver their own products to their customers by their own trucks as an incident in the sale of such beverages. Under sections 6064-1 and 6064-15, General Code, the Department of Liquor Control can issue H permits to common and contract carriers only, and the Department has no authority to issue an H permit to a manufacturer of beer who delivers or transports such beverage by his own motor vehicles to his customers.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3931.

APPROVAL, NOTE OF JEFFERSON TOWNSHIP RURAL SCHOOL DISTRICT,
FRANKLIN COUNTY, OHIO, \$5,000.00

COLUMBUS, OHIO, February 9, 1935.

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