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## PERMITS: LOCUS, WATER TRANSPORTATION VESSEL

1. SUCH PERMITS ARE NOT ISSUED "IN ANY COUNTY OR MUNICIPAL CORPORATION" NOR "IN ANY POLITICAL SUBDIVISION" UNDER §4303.29 RC OR REGULATION 64 OF DEPARTMENT OF LIQUOR CONTROL.
2. FEES PROVIDED FROM SUCH PERMITS DISTRIBUTED TO MUNICIPAL CORPORATION OR TOWNSHIP IN WHICH OWNER HAS PRINCIPAL OFFICE OR PLACE OF BUSINESS IN OHIO—§4301.30 RC.

## SYLLABUS:

1. Where a water transportation vessel operates a passenger service on a regularly scheduled route between Cleveland, Ohio and Detroit, Michigan, which route traverses portions of two or more Ohio Counties consisting of that area lying north of the south shore of Lake Erie and south of the international boundary between the United States and Canada, type D liquor permits issued with relation to such vessel to the owner or operator thereof under the provisions of Section 4303.13, *et seq.*,

Revised Code, are not permits issued "in any county or municipal corporation," nor issued "in any political subdivision" within the meaning of the quota provisions in Section 4303.29, Revised Code, or in Regulation No. 64 of the Ohio Department of Liquor Control.

2. Where a type E or H permit is involved, or a permit is issued with relation to a water transportation vessel as described in the preceding paragraph, such permits, for the purpose of the distribution of fees as provided in Section 4301.30, Revised Code, are deemed, under the express provisions of that section, to have been issued in the municipal corporation or township in which the owner or operator of such vessel, vehicle, or equipment, has his principal office or place of business in this state.

Columbus, Ohio, June 24, 1957

Hon. Fred A. Leaders, Acting Director  
Department of Liquor Control, Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

"Recently a question has been raised as to the application of Section 4303.29, Ohio Revised Code and Regulation Number 64, Board of Liquor Control, to ships operating on the waters of Lake Erie.

"Your opinion is requested as to two specific questions :

"1. When an application is received by the Department for a D type permit to be used by ships operating on Lake Erie, does that application fall under the permit quotas prescribed by Section 4303.29, *supra*, and/or Regulation Number 64, *supra*?

"2. If so, under what political subdivision quota, is the permit to be included, in light of Section 4301.30 which provides for distribution of permit fees to the municipality, township, or corporation where the owner or operator of such vessel has his principal office or place of business?"

Referring first to your second question, we may note the following provision in Section 4301.30, Revised Code :

"\* \* \* For the purpose of the distribution required by this section, E, H, and D permits covering boats or vessels are deemed to have been issued in the municipal corporation or township wherein the owner or operator of the vehicle, boat, vessel, or dining car equipment to which such permit relates has his principal office or place of business within the state \* \* \*."

From this language it appears that regardless of the application to this type of permit of the quota provisions set out either in the statute or in Regulation No. 64, definite provision is made for the distribution of the fees thereon to the "municipal corporation or township wherein the owner or operator of the \* \* \* vessel \* \* \* to which such permit relates has his principal office or place of business."

This, of course, is a matter of fact for your determination. I may add that since receiving your query I have been informed that the applicant in question is a Delaware corporation, licensed under the Ohio Foreign Corporation Act, with its principal office in Ohio, designated as provided in subparagraph (4), division (B), Section 1703.04, Revised Code, as Cleveland, Ohio. This being the case, it would appear that the distribution here involved, regardless of the quota question, should thus be made to the city of Cleveland.

Referring again to the language quoted above from Section 4301.30, Revised Code, it will be seen that it fixes the location of a permit issued with relation to a vessel only "*for the purpose of the distribution required by this section.*" This language plainly implies that for other purposes such location is not necessarily to be used, and suggests the possibility that for other purposes types E and H permits, and D permits covering vessels, cannot by their nature be deemed to have any one location.

In this regard it is to be noted that E type permits relate to railway dining cars, *etc.*, and H type permits relate to public utility carriers engaged in transporting alcoholic beverages. Such permittees thus operate in or through numerous subdivisions, and the impossibility of assigning any one location to them, except by some arbitrary rule such as that noted above in Section 4301.30, Revised Code, is obvious.

Such impossibility appears to have been recognized both in Section 4303.29, Revised Code, and in the department's Regulation No. 64, for in neither is there a quota limitation provided as to type E or H permits. Nevertheless, it is apparent that the same impossibility of assigning a location to a D type permit issued with relation to a vessel will be present where such permit covers sales enroute through two or more townships, counties or cities.

The question is, therefore, whether the quota provisions in Section 4303.29, Revised Code, and in Regulation No. 64, can be deemed to

apply to type D permits covering vessels, despite the language of the quota statute and the quota regulation referring to D permits generally.

The pertinent language of Section 4303.29, Revised Code, is as follows:

“Not more than one D-3, D-4, or D-5 permit shall be issued for each two thousand population, or part thereof, *in any county or municipal corporation*, except that in any city of a population of fifty-five thousand or more, one D-3 permit may be issued for each fifteen hundred population, or part thereof.” (Emphasis added)

In Regulation No. 64 a limitation is imposed as to D-1, D-2, D-3, D-4, and D-5 permits “issued *in any political subdivision*.”

In the case at hand in the applications for D-1, D-2, and D-3 permits, in response to the question as to the location of applicant's place of business, it is stated:

“Vessel Aquarama operating on waters of Lake Erie in Ohio; operation scheduled June 15 - September 15 between Detroit, Michigan and Cleveland, Ohio.”

All of the quota provisions here involved are based on the population of the subdivision “in” which the permit is issued. It is plain, however, that the holder of a D-3 permit, issued for a vessel, may sell spirituous liquor in any municipal corporation, township, *etc.*, or through which such vessel operates except such as have been voted “dry.” See final paragraph in Section 4303.29, Revised Code.

It is my view that the quota provisions noted above cannot be construed as applicable so as to require a meeting of the quota test as to each such subdivision, nor as to the aggregate of them; nor do I think the arbitrary location fixed as to “route operation permits,” set out in Section 4301.30, Revised Code, can be regarded as applicable for any purpose other than that provided in that section. Hence I conclude that none of such quota provisions are applicable to D type permits issued to cover the operations of a vessel in the waters of Lake Erie, the scheduled route of which is through two or more counties.

By referring to Section 14533, General Code, it will be observed that the limits of Cuyahoga and Lorain counties extend northward from the shore of Lake Erie to the northern boundary of the United States. It thus appears that the route which would normally be followed by the

vessel here concerned from Cleveland to Detroit would traverse parts of both Cuyahoga and Lorain counties; and I am informed that such a route is actually contemplated. I thus conclude that the quota provisions would not be applicable to the applications here in question.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. Where a water transportation vessel operates a passenger service on a regularly scheduled route between Cleveland, Ohio and Detroit, Michigan, which route traverses portions of two or more Ohio counties consisting of that area lying north of the south shore of Lake Erie and south of the international boundary between the United States and Canada, type D liquor permits issued with relation to such vessel to the owner or operator thereof under the provisions of Section 4303.13, *et seq.*, Revised Code, are not permits issued "in any county or municipal corporation," nor issued "in any political subdivision" within the meaning of the quota provisions in Section 4303.29, Revised Code, or in Regulation No. 64 of the Ohio Department of Liquor Control.

2. Where a type E or H permit is involved, or a permit is issued with relation to a water transportation vessel as described in the preceding paragraph, such permits, for the purpose of the distribution of fees as provided in Section 4301.30, Revised Code, are deemed, under the express provisions of that section, to have been issued in the municipal corporation or township in which the owner or operator of such vessel, vehicle, or equipment, has his principal office or place of business in this state.

Respectfully,  
WILLIAM SAXBE  
Attorney General