

in mind must be entered into by the Director of Public Works on behalf of the State of Ohio, acting for the Board of Trustees of the Kent State University. The Director of Public works will then, in his general supervisory capacity, supervise the construction of the dormitories and materials going into the buildings. This conclusion, of course, calls for the formal entering into these contracts to be made by the Director of Public Works. The contract for the services of the architect which you already have hired will be entered into by the Department of Public Works if the employment is satisfactory to said department.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1163.

TWENTY-FIRST AMENDMENT TO THE CONSTITUTION OF
THE UNITED STATES—STATE MAY PROHIBIT OR REG-
ULATE THE IMPORTATION OF INTOXICATING LIQUOR
—WINE MAY BE IMPORTED, WHEN.

SYLLABUS:

1. *By reason of the Twenty-first Amendment to the Constitution of the United States, the State of Ohio may prohibit or regulate the importation of beer or intoxicating liquor into the State of Ohio, even though said transportation is in interstate commerce.*

2. *The holder of an A-3 permit issued by the Department of Liquor Control may only import wine or spirituous liquor for "blending or other manufacturing" purposes.*

COLUMBUS, OHIO, September 16, 1937.

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

DEAR SIR: This will acknowledge receipt of your letter of recent date which reads as follows :

"May I have your opinion on the following question :

Can the holder of a Class A-3 permit, a rectifier, who is permitted to import wine for manufacturing and blending purposes, import wine and brandy for sale outside the State of Ohio and carry such a stock in his place of business in Ohio?"

The first question that arises in connection with your inquiry is whether the transaction that you describe, namely, the importation of wine by an Ohio permit holder and the subsequent exportation of said wine, is a transaction in interstate commerce which the state is powerless to prohibit. The second paragraph of the Twenty-first Amendment to the Constitution of the United States reads as follows:

“The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”

In the recent case of *State Board of Equalization vs. Young's Market Company*, Vol. 81, Supreme Court Law Edition, Advanced Opinions No. 1, page 37, it was held that by reason of the Twenty-first Amendment, the traffic in intoxicating liquor insofar as the importation of intoxicating liquor into a state for use and delivery therein is concerned, was not within the protection of the Commerce Clause of the United States Constitution. In regard to this issue the Court at page 39 said:

“The Amendment which ‘prohibited’ the ‘transportation or importation’ of intoxicating liquors into any state ‘in violation of the laws thereof,’ abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes.”

In the decision in this case it was concluded that by reason of the Twenty-first Amendment the state could prohibit importation into a state or regulate such importation in any manner it saw fit, including the exaction of fees for the privilege of importing, and that such a regulation or prohibition would not be in violation of the Interstate Commerce Clause. Therefore there can be no doubt that the State of Ohio can limit the powers of importation of beer, wine or spirituous liquor in any manner it sees fit.

There remains the question of whether the provisions of the Liquor Control Act prohibit the holder of an A-3 permit from carrying on the transaction mentioned in your letter, namely, the importing of wine and brandy into Ohio and stocking said merchandise in the State of Ohio for the purpose of selling same without the state.

The first paragraph of Section 6064-14, General Code, which was not amended by Amended House Bill No. 501, provides as follows:

“No person shall directly or indirectly, himself or by his clerk, agent or employee, manufacture for sale, offer, keep or possess for sale, furnish or sell, or solicit the purchase or sale of any beer or intoxicating liquor in this state, or offer for sale, sell or solicit the purchase or sale of any alcohol in this state, or transport or *import* or cause to be *imported* or transported, any beer, wine or intoxicating liquor or alcohol in or into this state for delivery, use or sale herein, unless such person shall have fully complied with the provisions of the liquor control act and shall be the holder of a permit issued by the department of liquor control and in force at the time.” (Italics the writer’s).

This section makes clear that it was the intention of the legislature that parties engaged in the traffic in beer or intoxicating liquor shall have only such powers as are specifically conferred upon them by the Liquor Control Act.

There are some holders of A-3 permits who obtained their permits prior to the Amendment to Section 6064-15 by Amended House Bill No. 501, and since it is my opinion as set forth in Opinion No. 715, rendered under date of June 11, 1937, that the rights, duties and privileges of parties holding permits from the Department of Liquor Control are determined by the laws under which their permits were issued, it is necessary to first consider the provisions as to an A-3 permit contained in Section 6064-15 before amendment. That section read in part as follows:

“Permit A-3: A permit to a manufacturer to manufacture spirituous liquor and sell such product to the department of liquor control or to the holders of a like permit or to the holders of A-4 permits for blending or manufacturing purposes; *to import into this state spirituous liquor and wine for blending or other manufacturing purposes*, and to export from this state spirituous liquor in bulk or otherwise, * * *.” (Italics the writers).

Your attention is directed particularly to the italicized portion of the above provision. This provision, as you will notice, specifically limits the purposes for which wine may be imported by an A-3 permit holder and does not include importation for the purposes mentioned in your inquiry.

Amended House Bill No. 501 enacted by the 92nd General Assembly amended in several particulars the rights and privileges of an A-3 permit holder. However, the provision which is important to this opinion,

remained unchanged. The right of an A-3 permit holder to import wine is still limited to such importation for "blending or other manufacturing purposes."

You will notice that Section 6064-15, General Code, also provides that the holder of an A-3 permit has the power to "export from this state spirituous liquor in bulk or otherwise." This provision was not changed by Amended House Bill No. 501 and therefore A-3 permit holders may be considered as a group. Section 6064-20, General Code, provides in part as follows:

" * * * *

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Nothing in the liquor control act shall be so construed as to prohibit the holder of a class A or class B permit from selling or distributing beer or intoxicating liquor to a person at a place outside of this state, nor to prohibit the holder of any such permit or a class H permit from delivering any beer or intoxicating liquor so sold from a point in this state to a point outside of this state.

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At first glance these two statutory provisions might seem repetitious. However, Section 6064-20 pertains to all Class A and Class B permit holders, and inasmuch as there is no provision in Section 6064-15 that A-1, A-2, A-4, B-1, B-2, B-3, B-4 and B-5 permit holders may export, the effect of the portion of Section 6064-20, above quoted is to give to these classes of permit holders the said right. Thus under this construction the portion of Section 6064-20, above quoted, is given separate operation except insofar as it pertains to the holders of A-3 permits. Furthermore it is my opinion that the powers to export and the powers to import are separate and distinct, and that though a permittee may have broad powers as to exportation, it does not in any way indicate that the legislature intended that he have similarly broad powers as to importation.

In specific answer to your question it is my opinion that the holder of an A-3 permit may import into this state spirituous liquor and wine for blending or other manufacturing purposes, but for no other purpose.

Respectfully,

HERBERT S. DUFFY,

Attorney General.