

5939.

APPROVAL—BONDS OF SILVER LAKE VILLAGE SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$14,000.00.

COLUMBUS, OHIO, August 7, 1936.

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

5940.

APPROVAL—BONDS OF AKRON CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$25,000.00.

COLUMBUS, OHIO, August 7, 1936.

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

5941.

APPROVAL — BONDS OF CITY OF PARMA, CUYAHOGA COUNTY, OHIO, \$6230.00.

COLUMBUS, OHIO, August 7, 1936.

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

5942.

DEPARTMENT OF LIQUOR CONTROL—NO AUTHORITY TO CANCEL B-2 PERMIT AND MAKE REFUND — HOLDER NOT HAVING B-1 PERMIT.

SYLLABUS:

The Department of Liquor Control does not have the authority under Section 6064-66, General Code, to cancel B-2 permits and to make refunds to the holders thereof where the holders of such B-2 permits are not at the same time the holders of B-1 permits.

COLUMBUS, OHIO, August 10, 1936.

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

DEAR SIR: This will acknowledge your request for my opinion which reads as follows:

"Under date of September 27th, 1935, Victory Gregory of Martins Ferry, Ohio, the holder of class B-2 permit No. 290, surrendered the same to the Department for cancellation and refund as is provided by Section 6064-66 of the General Code.

Records in the Department showed that Mr. Gregory was not the holder of a class B-1 permit and the Department therefore refused to accept the permit for cancellation and refund.

The question has again been submitted to the Department for further consideration and I hereby respectfully request your formal written opinion as to whether or not this Department has the legal authority to cancel and make refund on a class B-2 permit under Section 6064-66 of the General Code where the permit holder is not also the holder of a class B-1 permit.

Shortly after September 5th, the effective date of the Amended Senate Bill No. 2, the Department demanded that Mr. Gregory take out a class B-1 permit in order to continue his business of distributing high-powered beer. Mr. Gregory was unable to pay the \$1,000 permit fee and take out this class of permit. It was therefore necessary that he discontinue business at that time. The class B-2 permit was of no value to Mr. Gregory, as his business consisted solely in the distribution of high-powered beer. He discontinued business and surrendered the B-2 permit to the Department for cancellation and refund.

The permit in question expired on March 2, 1936. I also request your opinion as to whether or not this fact precludes the Department from granting a refund, the same to be dated from the date the permit was originally surrendered to the Department for cancellation."

Section 6064-66, General Code, as enacted in Senate Bill No. 2, 116 O. L., reads as follows:

"Holders of B-2 permits who surrender their permits for cancellation by the department in the event that the liquor control act is amended so as to allow holders of B-1 permits to sell ale, porter, stout and other malt liquors containing more than 3.2 per

centum of alcohol by weight and not containing more than seven per centum of alcohol by weight, shall be refunded by the department of a proportionate amount representing the unexpired portion of their permit year, excepting that no refunder shall be made if the unexpired portion of the license year shall be less than thirty days; such refund shall be made from the moneys in the custody of the treasurer of state and subject to the order of the department and at the next distribution of permit fee revenues, the amount so refunded shall be withheld from the moneys, if any, due to the subdivision which received the original fee."

In order to construe the provisions of Section 6064-66, General Code, it is necessary to consider the circumstances surrounding the enactment of that section. Under the Liquor Control Act (Sections 6064-1 et seq., General Code), as originally enacted in House Bill No. 1, in the Second Special Session of the 90th General Assembly, it was necessary for a person desiring to sell and distribute at wholesale beer containing more than 3.2 per centum of alcohol by weight, to secure a Class B-2 permit, which permit was issued for the sale and distribution of wine at wholesale. The term "wine" as used in the Liquor Control Act, as originally enacted, was defined as follows in Section 6064-1, General Code:

* * * * *

'Wine' includes all intoxicating liquor containing not less than 3.2 per centum of alcohol by weight and not more than 21 per centum of alcohol by volume, which is made by the fermentation of the juices of sound, ripe and undried grapes, fruits and includes pure wine and compound wine as these terms are defined in section 5798 of the General Code and not exceeding the alcoholic content herein provided. * * *

By virtue of that definition and also because of the provisions relating to a B-1 permit which was issued for the sale and distribution at wholesale of beer containing not more than 3.2 per centum alcohol by weight, it was necessary for a person desiring to sell both beer and high-powered beer to be the holder of a B-1 permit and a B-2 permit.

In the amendment of the various provisions of the Liquor Control Act, in Senate Bill No. 2, 116 O. L., the definition of "wine" was amended to read as follows:

* * * * *

'Wine' includes all intoxicating liquor containing not less than 3.2 per centum of alcohol by weight and not more than 21

per centum of alcohol by volume, which is made by the fermentation of the juices of sound, ripe and undried grapes, fruits and includes pure wine and compound wine as those terms are defined in sections 5798 and 5800 of the General Code and not exceeding the alcoholic content herein provided.”

Likewise, the provisions of Section 6064-15, General Code, pertaining to the issuance of B-1 permits were also amended so as to permit the holder of such a permit to sell both beer and high-powered beer under such license. Section 6064-15, General Code, as amended and in so far as pertinent, reads:

“The following classes of permits may be issued:

* * * * * * * * *

Permit B-1: A permit to a wholesale distributor of beer to bottle, distribute, or sell beer, ale, lager, stout and other malt liquors containing not more than seven per centum of alcohol by weight; for home use and to retail permit holders under such regulations as may be promulgated by the department. The fee for this permit shall be computed on the basis of annual sales and distribution of beer and other malt liquor. The initial fee shall be one thousand dollars for each distributing plant or warehouse and said initial fee shall be increased at the rate of five cents per barrel for all beer and other malt liquor distributed and sold in Ohio in excess of five thousand barrels during the year covered by the permit. * * *

Prior to the effective date of the amendment of Section 6064-15, General Code, in reference to B-1 permits, it was necessary for a great many persons selling at wholesale beer and high-powered beer to renew their B-1 and B-2 permits. The legislature by the amendment of Section 6064-15, General Code, having enlarged the privileges conferred by the issuance of such a B-1 permit so as to include the sale of high-powered beer under such permit, deemed it proper to provide for a refund to those holders of B-1 permits who had taken out B-2 permits in order to sell high-powered beer during the interim preceding the effective date of the amendment. The legislature, to effectuate that purpose, enacted Section 6064-66, General Code.

It was not the intention of the legislature to provide refunds to all holders of Class B-2 permits. The enactment of Section 6064-66, General Code, was intended only to take care of a situation wherein the priv-

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.”

Section 6064-39, General Code, reads :

“Whenever the department of liquor control shall cancel a permit, as required by any provision of this act, the department shall refund to the holder thereof, or to his executors, administrators, receivers, trustees in bankruptcy or to an assignee for the benefit of his creditors a proportionate amount representing the unexpired portion of his permit year; excepting that such refund shall in no event be more than ninety per cent of such fee, and if the unexpired portion of the license year be less than thirty days no refunder shall be made. Such refund shall be made from the moneys in the custody of the treasurer of state and subject to the order of the department; and at the next distribution of permit fee revenues, the amount so refunded shall be withheld from the moneys, if any, due to the subdivision which received the original permit fee.”

That section authorizes the Department of Liquor Control to make a refund when a permit has been cancelled by the Department for any one of the causes set forth in Section 6064-25, General Code, quoted herein. A reading of Section 6064-39, General Code, clearly shows that the refund therein authorized is only to be made in cases where permits are cancelled for reasons and causes beyond the control of the permit holder.

From a reading of the Liquor Control Act it will be found that the privileges conferred by the issuance of a permit are personal to the one to whom the permit is issued, (Section 6064-20, General Code), and are not privileges which may be exercised by others than the permit holder. The refund is to be paid either to the estate of the deceased permit holder or to the other legal representatives enumerated in Section 6064-39, General Code. The only time the Department of Liquor Control is authorized to make a refund directly to a permit holder is where the permit has been cancelled as the result of a local option election or on the surrender of a B-2 permit as provided in Section 6064-66, General Code.

Inasmuch as the legislature has not provided for a refund where the permit holder desires to voluntarily surrender a permit, it follows that the provisions of Section 6064-66, General Code, should be strictly construed and the provisions thereof interpreted so as to enable the admin-

istrators of the Liquor Control Act to carry out the legislative intent therein expressed. To construe Section 6064-66, General Code, so as to enable any holder of a B-2 permit to voluntarily surrender his permit and secure a refund for the unexpired portion of such permit, would make it possible for a great many such permit holders to go out of business and secure a refund of their permit fee, a privilege which has not been conferred by the legislature upon other permit holders. By construing Section 6064-66, General Code, so as to limit refunds to holders of B-2 permits who are at the same time holders of B-1 permits, discrimination against holders of permits other than B-2 permits will be prevented.

To avoid absurd consequences is one of the primary functions of statutory interpretation, since it is a well settled principle of statutory construction that a legislature does not intend to enact a statute which will produce absurd consequences. The rule is stated in *Hill v. Micham*, 116 O. S., 549, at 553:

“* * * the construction of a statute depends upon its operation and effect, and not upon the form that it may be made to assume, *Butzman v. Whitbeck*, 42 Ohio St., 223. It has also been held that it is the duty of courts, in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd consequences, injustice, or great inconvenience, as none of these can be presumed to have been within the legislative intent. *Moore v. Given*, 39 Ohio St., 661.”

See also 36 O. Jur., 643. By applying that principle of statutory construction in the interpretation of Section 6064-66, General Code, the absurd consequences heretofore pointed out in this opinion will be avoided.

In conclusion, it is my opinion that the Department of Liquor Control does not have the authority under Section 6064-66, General Code, to cancel B-2 permits and to make refunds to the holders of such B-2 permits where the holders thereof are not at the same time the holders of B-1 permits.

Respectfully,

JOHN W. BRICKER,
Attorney General.