

OPINION NO. 84-093

Syllabus:

The Department of Liquor Control may not offer rewards to the public for information leading to the arrest and conviction of individuals committing criminal acts against state liquor stores.

To: Richard E. Carey, Director, Department of Liquor Control, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1984

I have before me your request for my opinion as to whether the Department of Liquor Control may, pursuant to R.C. 4301.10(B)(2) or any other section of R.C. Title 43, offer rewards for information leading to the arrest and conviction of individuals committing criminal acts against state liquor stores.

The Department of Liquor Control, created pursuant to R.C. 4301.02, is an administrative department of the State of Ohio. State ex rel. Williams v. Glander, 148 Ohio St. 188, 74 N.E.2d 82 (1947) (syllabus, paragraph two). As such, its authority, express or implied is limited to that conferred upon it by the General Assembly. Burger Brewing Co. v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975); 1983 Op. Att'y Gen. No. 83-029. The authority conferred upon an administrative agency by the General Assembly cannot be extended by the agency. Burger Brewing Co. v. Thomas; Davis v. State ex rel. Kennedy, 127 Ohio St. 261, 187 N.E. 867 (1933) (syllabus, paragraph one). The Department is also bound by the principle that a public body may expend public funds only pursuant to clear statutory authority, and when such authority is of doubtful import, the doubt is to be resolved against the expenditure. State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916); Op. No. 83-029.

You specifically ask whether the Department of Liquor Control has the requisite authority under R.C. 4301.10(B)(2) or otherwise to offer a reward for information leading to the arrest and conviction of persons committing crimes against state liquor stores. R.C. 4301.10(B), setting forth various powers of the Department of Liquor Control, states, in part: "The department may. . .(2) Enter into leases and contracts of all descriptions within the scope of its functions. . . ." It appears that your question is whether the Department's authority to enter into contracts, pursuant to R.C. 4301.10(B)(2), includes the power to offer the type of reward set forth in your letter.

A reward is defined as, "[a] recompense or premium offered or bestowed by government or an individual in return for special or extraordinary services to be performed. . .or for some act resulting to the benefit of the public; as, a reward. . .for the discovery and apprehension of criminals, for the restoration of lost property." Black's Law Dictionary 1188 (5th ed. 1979). The offer and acceptance of a reward is governed by general contract principles. As stated in Gilmore v. Lewis, 12 Ohio 281, 285 (1843):

No doubt is entertained by us, as a general rule, that the detection, arrest, and conviction of a felon, or the discovery and seizure, or return, of stolen property, is a good consideration to sustain a promise made on such condition. When the condition is complied with, he who performs it becomes the promisee; the contract is then complete and executed on his part; the legal interest is vested in him, and he has the right to claim the reward, as the benefit of his exertion.

I note, however, that R.C. 4301.10(B)(2) empowers the Department of Liquor Control to contract only with respect to matters "within the scope of its functions." R.C. 4301.10 prescribes the powers and duties of the Department of Liquor Control. Among the Department's duties are the operation, management, and control of state liquor stores, R.C. 4301.10(A)(3), the enforcement of penal laws relating to the manufacture, importation, transportation, distribution and sale of beer and intoxicating liquors, R.C. 4301.10(A)(4), and the delegation to its agents of any of the Department's powers with respect to investigation and of any powers of police officers with respect to the enforcement of any of the penal laws relating to beer and intoxicating liquor, R.C. 4301.10(A)(7). See generally Solomon v. Liquor Control Commission, 4 Ohio St. 2d 31, 212 N.E.2d 595 (1965), cert. denied, 384 U.S. 928 (1966) (syllabus, paragraph two). Although the Department is given broad powers of enforcement and investigation, no statute specifically authorizes the Department to offer rewards in connection with the execution of its duties. Where the General Assembly intended to authorize the offering of rewards for assistance

in the apprehension and conviction of criminals, it has done so in clear statutory language. See, e.g., R.C. 307.49 (authorizing board of county commissioners to offer rewards for detection and apprehension of persons charged with or convicted of a felony); R.C. 3313.173 (authorizing certain boards of education to offer and pay reward for information leading to arrest and conviction of persons violating specific statutes with respect to property owned or controlled by the board). Since the authority to expend public funds must be clearly and distinctly granted, I must conclude that, in the absence of a statute expressly authorizing the Department to offer and pay rewards, the Department is without authority to offer rewards in the circumstances about which you ask.

It is, therefore, my opinion, and you are advised, that, the Department of Liquor Control may not offer rewards to the public for information leading to the arrest and conviction of individuals committing criminal acts against state liquor stores.