

ceed fifty per cent, as the condition of the roads or highways would justify when thaws or excessive moisture render the highways or any sections of the same insufficient to bear the traffic thereon or when such roads might be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture.

Specifically answering your inquiries it is my opinion that:

1. The only limitation on the county commissioners in making a classification of improved county and township roads and all other improved roads within the county, except inter-county highways or main market roads which have been constructed and maintained by the state, is that such classification must be a reasonable one, which is a question of fact, and that such classification must be based on the nature of the road-bed, construction and other proper factors which are material, and that the lowest end of such scale of classification must not be less than five (5) tons for the weight of vehicle and load.

2. Assuming a reasonable classification has been made by the county commissioners relative to the weight of the motor vehicle and load on improved county and township roads and all other improved roads in the county except inter-county highways and main market roads which have been constructed and maintained by the state, a reasonable reduction in such classification may be made as provided in Section 7250, General Code, not to exceed fifty per cent, "as the condition of the roads or highways would justify" when thaws or excessive moisture render the highways or any sections thereof insufficient to bear the traffic thereon or when such highways or any sections of them would be damaged or destroyed by heavy traffic during such period.

3. The authority to make a reasonable classification as provided in Section 7249-2, General Code, and to make a reasonable reduction, not to exceed fifty per cent, "as the condition of the roads or highways would justify" when thaws or excessive moisture render the highways or any sections of them insufficient to bear the traffic or when the highways or any sections of them would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture, is not limited by the provisions of Sections 7246 and 7248-1, General Code.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

4045.

LIQUOR CONTROL DEPARTMENT—ONLY H PERMIT HOLDER MAY  
TRANSPORT OR IMPORT LIQUOR INTO OHIO WHEN PURCHASED IN  
ANOTHER STATE—WHO MAY ENFORCE LIQUOR CONTROL ACT.

**SYLLABUS:**

1. *Spirituous liquor purchased in another state cannot be transported or imported into Ohio for use or delivery herein, except by the holder of an H permit.*

2. *The amount of intoxicating liquor that may be imported into Ohio for use and delivery herein by the holder of an H permit can be governed by the Department of Liquor Control when it issues its consent to a person to import intoxicating liquor into Ohio.*

3. *The enforcement of the provisions of the Liquor Control Act and the laws of this state relating to the manufacture and sale of intoxicating liquor, is not limited to the persons deputized by the Department of Liquor Control for such purpose. Any*

*sheriff, marshal, police officer or peace officer has the power and authority to arrest persons violating the provisions of the Liquor Control Act or the laws of this state relating to the manufacture, sale and distribution of intoxicating liquor.*

COLUMBUS, OHIO, March 15, 1935.

HON. ROY L. HENRY, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date wherein you request my opinion on the following questions:

“First: Where liquor is bought in Kentucky, the tax paid on it and transported to Ohio, can we require them to pay a license for the transportation and do they have to display a permit?

Second: What would be the amount they could transport, could they conduct it as a business?

Third: To whom would the patrolmen refer the case?”

The second section of the Twenty-first Amendment to the Constitution of the United States is pertinent to your inquiry and reads:

“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.”

By virtue of the provisions of this amendment to the Constitution of the United States, the states can regulate the traffic in intoxicating liquor even to the extent of prohibiting the importation of the same into a state even though the same may be in interstate commerce. The adoption of that amendment is a recognition of the fact that because of the peculiar character of the liquor traffic each state, under its police power, should be allowed to deal with the problems presented thereby in such manner as it may deem necessary.

Prior to prohibition, by statutory and judicial pronouncement it was well established that a state had authority to exercise a measure of control over the interstate commerce of intoxicating liquor coming within its borders. See 27 U. S. C. A., 121 (Wilson Act); 27 U. S. C. A., 122 (Webb-Kenyon Act); and 27 U. S. C. A., 123 (Reed Amendment). These acts were not repealed by virtue of the Eighteenth Amendment or the National Prohibition Act. *Premier-Pabst Sales Company, et al., vs. Paul V. McNutt, et al.*, unreported decision of a statutory three-judge court in the District Court of the United States for the Southern District of Indiana, Indianapolis Division.

It has universally been recognized by the courts of this country that the liquor business and the traffic therein is one which is subject to the police power of the state and that there is no inherent right to engage in such a business, nor is a property right invaded by an act of a legislature regulating or prohibiting the right to engage in the liquor business. Courts have held that the liquor business is one which affects the public welfare, safety and morals, and for that reason the police power of a state can be invoked to prohibit or regulate the manufacture and sale of intoxicating liquor. *State vs. Hipp*, 38 O. S., 199; *Bloomfield vs. State*, 88 O. S., 253; *Bartmeyer vs. Iowa*, 18 Wall., 129; License Cases, 5 How., 504; *Boston Beer Company vs. Massachusetts*, 97 U. S., 25; *Mugler vs. Kansas*, 123 U. S., 623; *Crowley vs. Christensen*, 137 U. S., 86; *Eberle vs. Michigan*, 232 U. S., 700; and National Prohibition Cases, 253 U. S., 351.

The transportation and importation of beer and intoxicating liquor for use and de-

livery in Ohio is regulated by sections 6064-14, 6064-15 and 6064-55, 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:

\* \* \*

\* \* \*

\* \* \*

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."

Section 6064-55 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 exemption contained in this section 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. As stated in Opinion No. 3930, rendered by me on February 9, 1935.

"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."

As held in that opinion, the Department of Liquor Control can issue H permits only to persons who are either contract carriers or common carriers. It is evident from a reading of sections 6064-14, 6064-15 and 6064-55 that intoxicating liquor can be imported for delivery and use in Ohio only by the holders of H permits.

By virtue of the provisions of section 6064-3, General Code, the Board of Liquor Control of the Department of Liquor Control has promulgated Regulation No. 28 which reads:

"No person, firm, or corporation shall import beer or intoxicating liquor into this state, for delivery or use in this state, or transport the same from place to place within this state, or transport out of this state any shipment of beer or intoxicating liquor originating in this state, unless such person, firm, or corporation shall be the holder of an 'H' permit issued by the Department of Liquor Control.

No railroad, express company, common carrier, contract carrier, or other carrier of merchandise, whether for compensation or otherwise, shall knowingly accept for shipment from a point outside this state, any beer or intoxicating liquor, consigned to any place or person located in this state, unless the consignor or consignee of such shipment shall have first obtained from the Department of Liquor Control a permit authorizing such shipment, and shall have presented a true copy thereof to the proposed carrier of such shipment.

Nothing herein contained shall prevent the holders of 'H' permits from importing into this state beer or intoxicating liquor consigned to the Department of Liquor Control or to any of the stores, warehouses, or state agencies, operated or controlled by the Department, or from handling intoxicating liquor which is shipped in interstate commerce in bond for customs duties due the United States of America and which is shipped subject to the regulations of the United States customs service."

Under this regulation the privileges conferred upon the holder of an H permit are not unlimited or unrestricted as far as the importation and transportation of beer and intoxicating liquor into this state are concerned. The fact that liquor is lawfully acquired in another state in no wise affects the right of the State of Ohio to prevent the importation of such beverage into this state. The sale and distribution of beer and intoxicating liquor in this state are strictly regulated by the provisions of the Liquor Control Act (section 6064-1, et seq., General Code).

The legislature in section 6064-15 has provided for certain classes of permits which authorize either the sale of beer or intoxicating liquor by the bottle or by the drink for consumption on the premises where sold. No one but a permit holder can sell beer or intoxicating liquor in this state. However, the right to sell spirituous liquor, that is, intoxicating liquor containing more than seventeen per centum of alcohol by volume, by the package for consumption off the premises either at retail or at wholesale, has been restricted solely to the Department of Liquor Control. All persons authorized to sell spirituous liquor by the drink for consumption on the premises where sold, must procure such spirituous liquor from the Department of Liquor Control. Section 6064-19, General Code, reads:

"No holders of class C permits, nor of class D-1, or class D-2, class D-4, or class D-5 permits, nor of class F permits, shall purchase any beer or wine for resale, excepting from holders of class A or class B permits, unless with the special consent of the department.

No holders of class D-3, class D-4 or class D-5 permits nor of class G permits shall purchase spirituous liquor for resale, excepting from the department, unless with the special consent of the department."

In other words, no one but the Department of Liquor Control, with the exception of the holders of G permits, can sell spirituous liquor by the package in the State of Ohio. Likewise, the holders of G permits who are authorized to sell spirituous liquor by the package on the written prescription of a licensed physician or dentist, are required to purchase their supply of spirituous liquor from the Department of Liquor Control.

Thus, the legislature has made it apparent that the traffic in intoxicating liquor in all of its phases is to be strictly regulated, even to the extent of regulating the importation of spirituous liquor from another state into this state. There is no provision in the Liquor Control Act which exempts liquor lawfully acquired in another state from the provisions of the Liquor Control Act.

Moreover, there is no provision in the Liquor Control Act which limits the quantity of intoxicating liquor that a holder of an H permit may import and deliver into this state. However, before intoxicating liquor can be brought into Ohio for use and delivery herein, it is necessary for the shipper or consignee, by virtue of section 6064-19 and under Regulation No. 28 adopted by the Board of Liquor Control, to procure the consent of the department to import intoxicating liquor. In granting such consent, the department can and does regulate the amount of intoxicating liquor that may be imported into Ohio. Thus, by the means of this regulation, the department is able to limit the quantity of intoxicating liquor that a holder of an H permit may lawfully transport into Ohio.

Sections 6064-8, 6212-43, as amended in the Liquor Control Act, 13422-3, as amended in the Liquor Control Act, and 13432-1 are pertinent and dispositive of your third question. Section 6064-8 reads in part:

"\* \* \* In addition thereto, the department shall have and exercise the following powers:

\* \* \*

\* \* \*

\* \* \*

4. To enforce the provisions of this act and the rules, regulations, and orders of the board of liquor control and the penal laws of this state relating to the manufacture, importation, transportation, distribution, and sale of beer and intoxicating liquors. The attorney general, any prosecuting attorney, and any prosecuting officer of a municipal corporation or a police or municipal court, shall at the request of the department prosecute any person charged with the violation of any of the penal provisions of this act or of any section of the General Code relating to the manufacture, importation, transportation, distribution and sale of beer and intoxicating liquor."

Section 6212-43 reads in part:

"When any agent or employee of the department of liquor control deputized for that purpose, or any other officer of the law, shall discover any person in the act of transporting in violation of law, beer or intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all beer or intoxicating liquors found therein being transported contrary to law. Whenever beer or intoxicating liquors transported or possessed illegally shall be seized by an officer named herein, he shall

take possession of the vehicle and team, or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof."

Section 13422-3 reads in part:

"Magistrates shall have jurisdiction within their respective counties, in all cases of violation of any law relating to:

\* \* \*

\* \* \*

\* \* \*

8. Any violation of the liquor control act, or keeping a place where intoxicating liquor is sold, given away or furnished in violation of any law prohibiting such acts."

Section 13432-1 provides:

"A sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, herein designated as 'peace officers' shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until a warrant can be obtained.

A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained."

It is evident from these sections that the enforcement of the provisions of the Liquor Control Act and the laws of the State of Ohio relating to the manufacture and sale of intoxicating liquor, is not confined solely to the employes of the Department of Liquor Control deputized for such purpose. It is the duty of every policeman to enforce the provisions of the Liquor Control Act, as well as the other laws relating to the manufacture and sale of intoxicating liquor. It is quite evident from these sections, especially section 6212-43, that a policeman would have the authority to arrest anyone who was transporting intoxicating liquor into this state without being the holder of an H permit or in violation of any other provision of the Liquor Control Act or the laws of this state.

Specifically answering your questions, it is my opinion that:

1. Spirituous liquor lawfully purchased in another state cannot be transported or imported into Ohio for use or delivery herein, except by the holder of an H permit.

2. The amount of intoxicating liquor that may be imported into Ohio for use and delivery herein by the holder of an H permit can be governed by the Department of Liquor Control when it issues its consent to a person to import intoxicating liquor into Ohio.

3. The enforcement of the provisions of the Liquor Control Act and the laws of this state relating to the manufacture and sale of intoxicating liquor, is not limited to the persons deputized by the Department of Liquor Control for such purpose. Any sheriff, marshal, police officer or peace officer has the power and authority to arrest persons violating the provisions of the Liquor Control Act or the laws of this state relating to the manufacture, sale and distribution of intoxicating liquor.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

4046.

APPROVAL, BONDS OF NEWTONSVILLE VILLAGE SCHOOL DISTRICT,  
CLERMONT COUNTY, OHIO, \$634.45.

COLUMBUS, OHIO, March 16, 1935.

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

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4047.

APPROVAL, BONDS OF MALINTA-CRELTON UNION RURAL SCHOOL DIS-  
TRICT, HENRY COUNTY, OHIO, \$2,871.10.

COLUMBUS, OHIO, March 16, 1935.

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

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4048.

APPROVAL, BONDS OF WHITEHOUSE VILLAGE SCHOOL DISTRICT, LUCAS  
COUNTY, OHIO, \$6,930.86.

COLUMBUS, OHIO, March 16, 1935.

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

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4049.

APPROVAL, NOTE OF EUCLID CITY SCHOOL DISTRICT, CUYAHOGA  
COUNTY, OHIO, \$20,000.00.

COLUMBUS, OHIO, March 16, 1935.

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

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4050.

APPROVAL, BONDS OF BERLIN RURAL SCHOOL DISTRICT, KNOX COUN-  
TY, OHIO, \$3,338.14.

COLUMBUS, OHIO, March 16, 1935.

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