view of that construction of the word "any", it follows that under section 24 (section 6064-24, General Code) no person holding a manufacturing or wholesaling permit can have any interest in, either directly or indirectly, or be connected with the business, the permit or the premises of any one authorized to sell or dispense beer, wine or spirituous liquor at retail by the package or drink.

The inhibition of section 24 (section 6064-24, General Code) likewise precludes any holder of an A or B permit from owning or operating a place of business where beer, wine or spirituous liquor is sold or dispensed at retail.

Specifically answering your questions, it is my opinion that:

1. Under section 24 of House Bill No. 1 (section 6064-24, General Code), enacted in the second special session of the 90th General Assembly, no person holding any A or B permit can have any financial interest, directly or indirectly, in the establishment, maintenance or promotion of the business of any person authorized to sell beer, wine or spirituous liquor at retail in Ohio.

2. No holder of any A or B permit can own, operate, establish or maintain any place of business where beer, wine or spirituous liquor is sold at retail, which privileges are conferred under C and D permits issued by the Department of Liquor Control.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2946.

BOARD OF EDUCATION—MOTION TO RECONSIDER ACTION OF PREVIOUS MEETING—VESTED RIGHTS—TEACHER NOT EMPLOYED WHEN MOTION TO RECONSIDER ADOPTED AT ADJOURNED SESSION.

SYLLABUS:

1. *A motion to reconsider the action taken by a board of education may be made by a member thereof who voted with the majority at any time during the same session at which the original vote which it is sought to reconsider was taken, provided no rights have vested thereunder in the meantime, although it be done at an adjourned meeting of the session.*

2. *Where a motion has been made and carried and at the same meeting or an adjourned session thereof, a motion is duly made to rescind the former action or reconsider the same, which motion carries by a majority vote, the teacher is not employed, regardless of the fact that between the time of the passage of the original motion and its reconsideration one of the members of the board notified the person in question that he has been employed as a teacher.*

COLUMBUS, OHIO, July 20, 1934.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—You have requested my opinion concerning the effect of the action of a certain board of education in your county school district with respect to the employment of a certain teacher. The facts as stated by you are as follows:

"The board received applications for teaching positions in the schools for the next school year, and among them was the application of the person in question. At a regular meeting one of the members moved that the application be accepted and the applicant hired. It was carried by three to two vote, and then the meeting was adjourned to meet at the call of the clerk. On the evening of the same day, after the meeting was held, one of the members informally notified the applicant that he had been hired. The clerk, however, never notified the applicant officially or in writing of the acceptance of the application. There was no board rule as to the method of notifying the teacher or any machinery whatsoever set up for the completion of the matter, except, of course, as provided by the Ohio statute. There was some dissension over the hiring of this teacher, so that two days after the previous session the clerk called a meeting, which was denominated an adjourned session of the previous meeting, and at this meeting a motion was made to rescind the motion of hiring the fourth grade teacher for further consideration.

What the board meant by wording a motion in such a manner I do not know, but that is the exact wording of the motion. On this motion three of the members voted yea, and two remained silent, and the motion was declared carried and the meeting then adjourned.

Now the applicant is declaring that he has been hired and that he will insist upon filling the position, or if not allowed to do so, will institute proper action against the board.

At the original meeting the application was accepted unconditionally, but the applicant was never formally notified."

It is a principle of parliamentary law upon which many of the rules and proceedings with respect thereto are founded that, when a question has once been put to a deliberative assembly and decided, whether in the affirmative or the negative, that decision is the judgment of the assembly, and cannot be brought in question.

The inconvenience of this rule, which is still maintained in all its strictness in the British Parliament, although divers expedients are there resorted to, as, for instance, explanatory or amendatory acts to contradict or evade the rule, has led to the introduction into the parliamentary practice in this country of the motion for reconsideration, which, while it recognizes and upholds the rule in all its strictness, yet allows a deliberative assembly, for sufficient reasons, to relieve itself of the embarrassment and inconvenience which would accordingly result from a strict enforcement of the rule in a particular case.

In Reed's Parliamentary Rules, Chapter 12, page 147, it is said:

"Even after a measure has passed the ordeal of consideration, of debate and amendment, and of final passage by the assembly, it has not yet, in American assemblies, reached an end. It is subject to a motion to reconsider. In England the motion to reconsider is not known. If any error has been committed, it is rectified by another act. * *

A motion to reconsider, if agreed to, reopens the entire question for further action, as if there had been no final decision. * *

> A motion to reconsider must be made on the day on which the action sought to be revised was had, and before any action has been taken by the assembly in consequence of it. * *"

It is usual, in legislative assemblies, to regulate by rule, the time, manner and by whom a motion to reconsider may be made. In the National Congress and most State Legislatures the rule has been adopted that a motion to reconsider must be made on the same day that the motion was made which it is sought to reconsider, or on the next succeeding legislative day, and in some instances it is provided by rule that it must be made at a time when there are as many members present as there were when the original vote which it is sought to reconsider, was taken.

Boards of education are authorized by Section 4750, General Code, to adopt such rules as they may deem necessary for their government. Where there is no rule, as there probably is not with the board of education to which you refer, when reconsideration of actions once taken may be had, it is quite generally held that reconsideration of the action of such boards may be taken at any time before interests involved become vested or rights of third persons intervene.

In Cushing's Manual of Parliamentary Practice, Section 257, it is said:

> "Where there is no special rule on the subject, a motion to reconsider must be considered in the same light as any other motion, and is subject to no other rule."

In *State ex rel. McClain* vs. *McKisson et al.,* 15 O. C. C., 517, affirmed by the Supreme Court without report, 54 O. S., 673, it is held with respect to the power of a city council to reconsider its action after rejecting all bids submitted for a pumping engine for the waterworks, as stated in the headnote:

> "The council has the power, after having once voted to reject all bids offered for a public contract, to reconsider its action and accept one of the bids where no rights have vested under the first action of the council, or where its first action has not so fully disposed of the matter that council could not take any further action in the matter."

See also *Adkins* vs. *Toledo,* 27 O. C. C., 417, and Dillon on Municipal Corporations, Fifth Edition, Section 539.

A leading case, frequently referred to by the courts and cited with approval in Cushing's Manual, Section 254, is *State* vs. *Foster,* 7 N. J. Law Repts., 101, in which it is said:

> "All deliberative assemblies have a right during the same session to reconsider any votes which they have taken, and only the final result is operative."

After an exhaustive search, I have found no case in which the right of a deliberative assembly or of any board or committee to reconsider its action at the same meeting in which the action was taken, has been denied. In the instant case the board, after taking the action spoken of, did not finally adjourn, but continued the session to a later date. It is well settled that under those circumstances the later session is but a continuation of the same meeting.

In Dillon on Municipal Corporations, Fifth Edition, Section 535, it is said:

"A regular meeting, unless special provision is made to the contrary, may adjourn to a future fixed day; and at such meeting it will be lawful to transact any business which might have been transacted at the stated meeting, of which it is, indeed, but the continuation."

In McQuillin on Municipal Corporations, Section 633, it is said:

"An adjourned meeting of either a regular or stated or special or called meeting is but a continuation of the same meeting."

See also *Young* vs. *Village of Rushsylvania,* 8 O. C. C., 75, and Opinions of the Attorney General, 1917, page 1393. Also McQuillin on Municipal Corporations, Second Edition, Sections 642 et seq.

My predecessor in the opinion which will be found in the reported Opinions of the Attorney General for 1929, page 682, held with respect to a matter very similar to the one submitted by you, as follows:

"1. A motion to reconsider the action taken by a board of education may be made by a member thereof who voted with the majority at any time during the same session at which the original vote which it is sought to reconsider was taken, provided no rights have vested thereunder, in the meantime, although it be done at an adjourned meeting of the session.

2. The adoption by a board of education of a resolution to employ a superintendent, or teacher, janitor or other employe, by authority of Section 7705, General Code, and in accordance with Section 4752, General Code, does not have the effect of making such employment, but merely authorizes the employment. The resolution is subject to the implied condition that it may be reconsidered in accordance with the ordinary parliamentary practice at any time before rights become vested thereunder."

The motion to rescind, spoken of by you, if made by a member of the board who had previously voted with the majority, was a proper motion and should be regarded as a motion to reconsider the previous motion to employ the teacher in question, as manifestly that was the intent of the mover although his motion was not couched in the technical language of a motion for reconsideration.

In *State ex rel.* vs. *Evans, et al.,* 90 O. S., 243, at page 251, Judge Wanamaker said:

"Obviously the proceedings of boards of education, of county commissioners, township trustees and the like must not be judged by the same exactness and precision as would the journal of a court."

McQuillin in the second edition of his work on Municipal Corporations, recently published, Section 636, quotes with approval the language of the Supreme Court of Wisconsin in *Hark* vs. *Gladwell,* 49 Wis. 172, 177; 5 N. W. 323, where in speaking of county boards, it is said:

"It will not do to apply to the orders or resolutions of such bodies nice verbal criticism and strict parliamentary distinctions because the business is transacted generally by plain men not familiar with par-

liamentary law. Therefore, their proceedings must be liberally construed in order to get at the real meaning and intent of the body."

Instances where the reconsideration of motions to employ teachers and superintendents of schools at the same meeting of a board of education, or an adjourned session thereof, have been uphld by the courts will be found in the following cases: *Board of Education* vs. *McFadden,* 6 O. N. P., 227; *Reed* vs. *Barton,* 176 Mass., 473, 57 N. E., 961; *Wood* vs. *Cutter,* 138 Mass., 149.

The only other question involved in your inquiry is whether or not any rights had vested in or on behalf of the person whose employment as a teacher was involved before reconsideration was had of the original motion to employ him as a teacher by reason of the notification given to him of the action taken by one of the members of the board. This notification was unofficial and entirely unauthorized. The statute, Section 7699, General Code, provides that notification, in cases of this kind shall be made by the clerk of the board of education, and until that notification is given and it is accepted by the person whose employment is involved no contract exists. Even notification by the clerk of a board of education can not be given and regarded as official until he is duly authorized to communicate the notification. In the light of the opinion of my predecessor which is referred to above, even the clerk would not be authorized to officially notify a person whose employment was being considered by a board of education that he had been so employed until the meeting at which a motion had been made to employ him had finally adjourned, as all such motions are subject to the implied condition that they may be reconsidered at the same meeting or an adjourned session thereof.

I am therefore of the opinion, in specific answer to your question that under the facts stated by you, the person in question has not been employed by the board of education to which you have referred, and that he does not, by reason of the proceedings taken, have a legal and enforcible contract to teach in the schools of the district.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2947.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE WEISS HEATING AND PLUMBING COMPANY OF CLEVELAND, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF HEATING CONTRACT AT BROADCASTING STATION AND BARRACKS FOR STATE HIGHWAY PATROL, MASSILLON, OHIO, AT AN EXPENDITURE OF $2,266 00, CONTRACT BOND EXECUTED BY HARTFORD ACCIDENT AND INDEMNITY COMPANY.

COLUMBUS, OHIO, July 21, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, a contract between the State of Ohio, acting by the Department of Public Works, for the Department