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LIQUOR CONTROL, BOARD OF—AN AGENCY, SECTION 154-62 GC—MAY IN REASONABLE EXERCISE OF DISCRETION DETERMINE THE DATE, TIME AND PLACE OF EACH ADJUDICATION HEARING REQUIRED BY EITHER THE ADMINISTRATIVE PROCEDURE ACT OR OHIO LIQUOR CONTROL ACT—SECTIONS 154-62 ET SEQ., 6064-1 ET SEQ., GC.

SYLLABUS:

The board of liquor control, being an "agency" as defined in Section 154-62, General Code, may, in the reasonable exercise of its discretion, determine the date, time and place of each adjudication hearing required under the provisions of either the administrative procedure act (Section 154-62, et seq., General Code) or the Ohio liquor control act (Section 6064-1, et seq., General Code).

Columbus, Ohio, March 27, 1953

Hon. A. A. Rutkowski, Director
Department of Liquor Control
Columbus, Ohio

Dear Sir :

I have for consideration an inquiry addressed to me by your predecessor, as follows :

“I have been asked by the members of the Board of Liquor Control to submit to you the question whether the Board in its official capacity has the right to hear cases in any other city than Columbus, Ohio.

“It has been the practice of the Board to schedule and conduct hearings in the larger centers of population in this state, thus saving time and money for those who otherwise would have to travel to Columbus to take part in cases before the Board. The legality of the Board sitting in Cleveland, Cincinnati, Toledo and other cities has been questioned and therefore I have been requested to ask your opinion whether the Board has the authority to sit in any city other than Columbus, Ohio, in its official deliberations.”

In Section 154-62, General Code, we find the following definition of “agency” :

“*‘Agency’ means and includes, except as hereinafter limited, any official, board or commission having authority to promulgate rules or make adjudications in the bureau of unemployment compensation, the state civil service commission, the department of industrial relations, the department of liquor control, the department of taxation, the industrial commission, the functions of any administrative or executive officer, department, division, bureau, board or commission of the government of the state of Ohio specifically made subject to the provisions of the administrative procedure act, and the licensing functions of any administrative or executive officer, department, division, bureau, board or commission of the government of the state of Ohio having the authority or responsibility of issuing, suspending, revoking or cancelling licenses. * * **”
(Emphasis added.)

In subparagraph 1 of Section 6064-3, General Code, we find that the board of liquor control is authorized “to adopt and promulgate, repeal,

rescind and amend, in the manner herein required, rules, regulations, standards, and orders necessary to carry out the provisions of the liquor control act." Under the third subparagraph of this section the board determines certain appeals from orders of the department, and complaints seeking the revocation of permits issued under authority of the liquor control act. In view of these provisions it is abundantly plain that the board is an "agency" within the definition of Section 154-62, supra, and it must necessarily follow that the remaining general provisions of the administrative procedure act, Sections 154-62 to 154-74, General Code, are applicable to the proceedings of the board except to the extent that conflicting special provisions are found in the liquor control act.

On the subject of the place at which an agency may conduct hearings the following provisions are found in Section 154-69, General Code:

"The date, time and place of each adjudication hearing required by this act shall be determined by the agency. However, if requested by the party, in writing, the agency may in its discretion designate as the place of hearing the county seat of the county wherein such person resides or a place within fifty miles of such person's residence." (Emphasis added.)

Because I find no special provision in the liquor control act which is in any way in conflict with the language just quoted, I am impelled to conclude that this provision relative to administrative agencies generally is applicable to the board.

A word is perhaps in order regarding the peculiar language in Section 154-69, supra, which in the first sentence provides for the exercise of an unlimited discretion by the agency in the matter of determining the place of a hearing, and in the second sentence attempts to "add" to such discretion in special circumstances. I am unable to perceive how anything can be added to an authorization as broad as that set out in the first sentence of this section, and since the second sentence does not purport to constitute a limitation on such authorization, I am unable to perceive how any effect can be given to it.

Accordingly, in specific answer to your inquiry, it is my opinion that the board of liquor control, being an "agency" as defined in Section 154-62, General Code, may, in the reasonable exercise of its discretion, determine the date, time and place of each adjudication hearing required under the

provisions of either the administrative procedure act, Section 154-62, et seq., General Code, or the Ohio liquor control act, Section 6064-1, et seq., General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General