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LIQUOR PERMIT—SEPARATE PARCELS OF REAL ESTATE WHICH ADJOIN EACH OTHER—ENTIRE TRACT—TWO BUILDINGS LOCATED THEREON—TEN FOOT STRIP OF LAND SEPARATES BUILDINGS—EASEMENTS GRANTED TO ADJOINING PROPERTY OWNERS—OWNER MAY OPERATE UNDER SAME LIQUOR PERMIT OR PERMITS, BUSINESS SPECIFIED FROM LOCATIONS IN BOTH BUILDINGS— PRO- VISO, BUILDINGS INTERDEPENDENT IN USE—PERMIT HOLDER HAS RIGHT TO EXERCISE SOME MEASURE OF CONTROL AND DOMINION OVER ALL LAND AND BUILD- INGS— PERMIT HOLDER MAY NOT MAINTAIN MORE THAN TWO FIXED COUNTERS, “BARS”, IN ROOMS OR PLACES ON PREMISES—SECTION 6064-15b G. C.

SYLLABUS:

The owner of separate parcels of real estate which adjoin each other so as to be capable of being described as an entire tract upon which are located two buildings separated by a ten-foot strip of land over which easements have been granted to adjoining property owners may operate, under the same liquor permit or permits, the business specified in such permit or permits from locations in both buildings, provided said buildings are interdependent in use and that the permit holder has the right to exercise some measure of control and dominion over all the land and buildings, and provided further that such permit holder does not maintain more than two fixed counters, commonly known as bars, in rooms or places on the permit premises in violation of Section 6064-15b, General Code.

Columbus, Ohio, March 31, 1950

Hon. Walter W. Mitchell, Chairman, Board of Liquor Control
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Liquor Control respectfully requests your opinion in regard to questions based on the following facts:

On May 15, 1937, Class D-1 and Class D-3 permits were issued by the Ohio Department of Liquor Control to Harley Young, Loudonville, Ohio. On August 12, 1938, Class D-2 and Class C-2 permits were issued by the Ohio Department of Liquor Control to Harley Young, Loudon-

ville, Ohio. Harley Young continued to operate under these and renewals of these permits until his death in February, 1946, at which time permits were issued to Harley Young, Richard Young, Viola Young, and Florence Young Bickel, jointly, the heirs at law of Harley Young.

In April, 1946, Harley Young, Richard Young, Viola Young and Florence Young Bickel, the heirs at law of Harley Young, formed an Ohio corporation to operate the business for which the permits were issued. This corporation owns the real property and the personal property necessary to carry on the business for which the permits were issued. Since the inception of the business in 1937 the permits have been issued for 206-208 West Main Street, Loudonville, Ohio, which is a two-story building, the second floor of which is a banquet room. At the north end or rear of 206-208 West Main Street is an alley which at one time was a public alley but is at the present time a private alley, the ownership of which rests in Young's Arcade, Inc., with easements granted to certain adjacent property owners. This alley is ten feet wide.

Immediately adjacent to and on the north side of this alley is another two-story building, the address of which is 117 North Water Street, Loudonville. The second story of the North Water Street building is connected with the second floor of the West Main Street building by an enclosed and covered passageway. The second story of the North Water Street building consists of living quarters occupied by one of the heirs at law of Harley Young, who is also a stockholder in Young's Arcade, Inc.

The first floors of the West Main Street and the North Water Street property have therein bars or taverns in which alcoholic beverages are served. The permits issued by the Department of Liquor Control and the applications for such permits as filed by Young's Arcade, Inc., give the address as 206-208 West Main street, with no reference made to 117 North Water Street. At the time of the renewals of the permits there have been diagrams submitted by permit inspectors of the Department of Liquor Control showing the condition of the premises of 206 West Main Street and 117 North Water Street being connected by the second floor passageway over the alley. However, permits were always issued by the Department. There is no direct connection between the second floor of 117 North Water Street and the first floor of 117 North Water Street, nor is there a direct connection between the first floor at 206 West Main Street and the first floor of 117 North Water Street.

Section 6064-15 of the General Code states that 'Permit C-2: A permit to the owner or operator of a retail

store to sell ale, stout, and all other malt liquors containing more than 3.2 per centum of alcohol by weight and not more than seven per centum of alcohol by weight, and wine in sealed containers only and not for consumption *on the premises where sold* * * *

Permit D-2: A permit to the owner or operator of a hotel or restaurant licensed pursuant to Section 843-2 of the General Code, or of a club, boat, or vessel, to sell ale, stout and other malt liquors containing more than 3.2 per centum of alcohol by weight and not exceeding seven per centum of alcohol by weight, wine, and prepared and bottled cocktails, cordials and other mixed beverages manufactured and distributed by holders of A-4 and B-3 permits at retail, either in glass or container, *for consumption on the premises where sold* * * *

Permit D-3: A permit to the owner or operator of a hotel or restaurant licensed pursuant to Section 843-2 of the General Code, or a club, boat or vessel, to sell spirituous liquor and wine at retail, only by the individual drink in glass or from the container, *for consumption on the premises where sold* * * *.

Section 6064-20 is as follows:

'Each class and kind of permit issued under authority of liquor control act shall authorize the person therein named *to carry on the business therein specified at the place or in the boat, vessel or classes of dining car equipment therein described, for a period of one year commencing on the day after the date of its issuance, and no longer, subject to suspension, revocation or cancellation as authorized or required by this act; and no such permit shall be deemed to authorize the person named therein to carry on the business therein specified at any place or in any vehicle, boat, vessel or class of dining car equipment other than that named therein,* nor to authorize any person other than the one therein named to carry on such business at the place or in the vehicle, boat, vessel or class of dining car equipment named therein; excepting in either case, pursuant to compliance with the rules, regulations, and orders of the Department of Liquor Control, governing the assignment and transfer of permits, and with the consent of the Department as herein provided; and excepting further in case of Class G permits, the holder thereof may substitute the name of another registered pharmacist for that entered on the permit, subject to rules and regulations of the Department. * * *'

(Underscoring ours.)

We now earnestly seek your opinion as to whether the premises at 206-208 West Main Street and 117 North Water Street may both operate under the permits as issued; or if the premises at 206 West Main Street and 117 North Water Street are separate premises for which separate permits must be obtained.

We are transmitting herewith a certified map drawn by a registered surveyor of the property operated by Young's Arcade, Inc., and we are also transmitting six photos of the property owned by Young's Arcade, Inc., which will give a pictorial representation of the facts involved."

The answer to the question which you present is dependent upon the meaning to be placed upon the word "premises" as used in Section 6064-15, General Code, and the words "at the place * * * therein described" as used in Section 6064-20, General Code. Clearly, the words "at the place * * * therein described" refer to the location indicated on the permit as that upon which the business of the permit holder is conducted. When read in connection with Sections 6064-15 and 6064-15b, General Code, both of which use the term "premises" to describe the location of such business, it appears that these words were intended to impart a meaning synonymous to that of the word "premises." I am inclined to the view, therefore, that Section 6064-20 authorizes a permit holder to carry on the business specified in the class and kind of permit issued to him on the premises which comprise the place of business described in the permit.

What, then, may be considered as the premises which comprise the place of business described in the permit? Webster's New International Dictionary, Second Edition, defines the word "premises", among other meanings, to include:

"The property conveyed in a deed; hence, in general, a piece of land or real estate; sometimes, esp. in fire-insurance papers, a building or buildings on land; as to lease premises; the premises insured. Sometimes loosely applied to personal property, as a vessel."

Black's Law Dictionary, Third Edition, at page 1403, includes among its definitions of the word the following:

"The area of land surrounding a house, and actually or by legal construction forming one inclosure with it. *Ratzell v. State* (Okla.), 228 P. 166, 168.

“The word is used to signify a distinct and definite locality. It may mean a room, shop, building, or other definite area. *Robinson v. State*, 143 Miss. 247, 108 So. 903, 905, or a distinct portion of real estate. *Ruble v. Ruble* (Tex. Civ. App.) 264 S. W. 1018, 1020.”

The word “premises” has varying meanings, usually determined by the context, and when used with respect to property means land, tenements and appurtenances thereunto belonging. It includes the curtilage surrounding a dwelling house and any separate buildings which may be located thereon. It is not limited to lands upon which dwelling houses are located but includes those upon which other buildings and structures may be located.

To assist in arriving at a logical conclusion, I should like to present two supposed situations. First let us assume that no alley or other open space separated the two buildings of the permit holder and that both buildings had been built as one unit with freedom of passage to all parts of the joint structure. Under such circumstances there can be little doubt that the wing of the building identified as 117 North Water Street would not be considered as separate and distinct premises from the wing identified as 206-208 West Main Street. Now, let us suppose that the building located at 117 North Water Street instead of being located where it is, was in fact located across West Main Street from the other building. In such a situation, even assuming that the two buildings were connected by an overhead passageway, it would appear reasonably clear that they would be separate and distinct premises.

From these supposed situations it may be seen that a connecting passageway is not determinative of whether or not two distinct buildings may be considered as belonging to the same premises. It also may be seen that the different street numbering of the same structure will not necessarily result in its being considered as two distinct premises.

An extensive search of the authorities has failed to disclose any case involving an analogous question to that which you have presented. In making said search, however, it has been noted that wherever the question of the meaning of the word “premises” was considered three factors were common to the fact situations. The first was that the parcel or parcels of land involved were so located as to constitute a continuous and contiguous whole, capable of being described as an entire tract. Sec-

ond, that the buildings located thereon, if more than one, must be interdependent in use or purpose. Third, that the land and buildings must have a common owner or owners who have the right to exercise some measure of control and dominion thereover.

In applying these factors to the fact situation which you have presented it will be seen that the real estate which is owned by the permit holder consists of three contiguous parcels, the two lots upon which the buildings are located and the alley, all of which is capable of being described as an entire tract. The buildings located thereon are both used in part at least, in the operation of the permit holder's business and it appears from additional information submitted with your request that the portion of the one used as living quarters by one of the heirs of Harley Young is used by a stockholder in the permit holder corporation who is also one of the operators of the business of the corporation. I am inclined to the view, therefore, that said buildings are interdependent in use. As pointed out above, the separate parcels of real estate in question as well as the buildings are all owned by the permit holder. There is no question as to the control which that owner exercises over the separate buildings and parcels of real estate upon which they are located. As to the alley, it appears that the permit holder's rights of full control are impaired only by easements granted to adjacent property owners. These easements, presumably are for the purpose of ingress and egress to the adjoining properties. Regardless of purpose, easements are grants of limited use of real estate. They do not divest the owner of the servient tenement of the possession of the property over which they are granted. Such owner retains all the rights and privileges of ownership subject only to the exercise of the use granted. The permit holder, therefore, has the right to exercise the dominion and control over the alley that any other owner of realty enjoys subject only to the use of the owners of the adjacent property for the purposes for which the easements were granted.

In view of the foregoing, it is my opinion that the owner of separate parcels of real estate which adjoin each other so as to be capable of being described as an entire tract upon which are located two buildings separated by a ten-foot strip of land over which easements have been granted to adjoining property owners may operate, under the same liquor permit or permits, the business specified in such permit or permits

from locations in both buildings, provided said buildings are interdependent in use and that the permit holder has the right to exercise some measure of control and dominion over all the land and buildings, and provided further that such permit holder does not maintain more than two fixed counters, commonly known as bars, in rooms or places on the permit premises in violation of Section 6064-15b, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.