

communication, that delinquent taxes which were levied by a political subdivision for particular purposes and for the use of particular funds of a political subdivision should, when the same are collected, be distributed to the funds of the political subdivision for which they were levied.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

---

4971.

LIQUOR CONTROL DEPARTMENT—MAY NOT CHARGE  
FEE FOR REGISTRATION OF SALESMEN EMPLOYED BY  
“K” PERMIT-HOLDERS TO SELL WHISKEY WARE-  
HOUSE RECEIPTS.

*SYLLABUS:*

*The Department of Liquor Control cannot impose and charge a fee for the registration of salesmen employed by holders of “K” permits to sell warehouse receipts for whiskey.*

COLUMBUS, OHIO, December 7, 1935.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter which reads as follows:

“An examination of the records and accounts of the Department of Liquor Control, State of Ohio, discloses that the Department is now licensing, under section 6064-15 of the General Code, and under permit K, dealers, distillers’ agents or liquor industry brokers to buy, sell, exchange, deliver or otherwise traffic in bonded warehouse receipts for spirituous liquor and directly or indirectly to finance the purchase of the same. In many instances, the K permit holder has on his staff salesmen who act as his agents in the above transactions.

The Department has attempted to register such agents and have charged a fee of \$5.00 for such registration.

We desire your official opinion as to whether the Department of Liquor Control has authority to collect a \$5.00 registration fee for agents of K permit holders and if such fee has been legally collected, to whom should it be distributed under Section 6064-29 of the General Code?”

It is a familiar rule of law that public officers and boards have such powers as they are expressly given by statute and such implied powers as are reasonably necessary to execute and administer the express powers. *Peter vs. Parkinson*, 83 O. S. 36, 49; *State, ex rel. Bentley vs. Pierce*, 96 O. S., 44, 47. The rule is stated in 32 *O. Jur.*, at pages 933 and 934 as follows:

“As a general rule, public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated. These powers must be exercised in the mode prescribed by statute.”

Whether the Department of Liquor Control can charge a salesman employed by a holder of a “K” permit a fee of five dollars (\$5.00) for registration depends upon statutory authority. Section 6064-15, General Code, reads in part as follows:

“The following classes of permits may be issued:

\* \* \*

\* \* \*

\* \* \*

Permit K: A permit to dealers, distiller agents, or liquor industry brokers, to buy, sell, exchange, deliver, or otherwise traffic in bonded warehouse receipts for spirituous liquor, and directly or indirectly to finance the purchase of the same.

The purchaser or purchasers of such bonded warehouse receipts for spirituous liquor shall not import into this state for use or delivery in this state, except for the purpose of storage, in a bonded government warehouse, the spirituous liquor represented by such receipts, unless in accordance with the provisions of this act and subject to such regulations as may be prescribed by the department.

Nothing in this act contained shall be construed to prohibit the sale or purchase of bonded warehouse receipts for spirituous liquor by any person to or from the holder of a K permit issued by the department of liquor control.

The fee for this permit shall be one hundred dollars.

All K permits shall expire June 1, 1936, and no K permits shall be issued thereafter.

All initial fees prescribed by this section shall be remitted to the department when applications are filed; all other fees shall be paid at such time or times and in such manner as may be prescribed by the department. The board of liquor control may adopt and promulgate rules and regulations requiring reports or returns for the purpose of determining the amounts of such additional permit fees.”

Under the terms of this statute there is no authority, express or implied, which would empower the Department of Liquor Control to charge five dollars (\$5.00) for registering salesmen employed by holders of "K" permits.

An examination of Section 6064-8, General Code, which clothes the Department of Liquor Control with certain enumerated powers and duties fails to disclose any provision which would empower the Department of Liquor Control to charge and collect a registration fee for the registration of salesmen of warehouse receipts employed by holders of "K" permits. Omitting entirely that part of Section 6064-8, General Code, which pertains to the establishment and maintenance of state liquor stores, Section 6064-8, General Code, reads:

"The department of liquor control shall have all the powers and duties vested in and imposed upon a department. The powers of the board of liquor control shall be exercised by the board in the name of the department. In addition thereto, the department shall have and exercise the following powers:

1. To control the traffic in beer and intoxicating liquor in this state, including the manufacture, importation, and sale thereof, as in this act provided.

2. To grant, refuse, suspend, revoke and cancel permits for the manufacture, distribution, transportation and sale of beer and intoxicating liquor and the sale of alcohol as authorized or required by this act. \* \* \*

\* \* \*

\* \* \*

\* \* \*

4. To enforce the provisions of the liquor control 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. \* \* \*

\* \* \*

\* \* \*

\* \* \*

7. For the purpose of carrying out the provisions of the liquor control act and enforcing the laws of this state relating to the manufacture, importation, transportation, distribution and sale of beer and intoxicating liquor, and the sale of alcohol, to inspect, upon demand, the books, accounts, records, and memoranda, or either, of any person subject to the provisions of the liquor control act or such laws and the place where the business of such person is conducted.

8. To delegate to any of its agents or employes any power of investigation and inquiry which the department may possess; and the powers of police officers with respect to the enforcement

of any of the penal laws of this state relating to beer and to intoxicating liquor. \* \* \*

9. All other powers expressly or by necessary implication conferred upon the department by any provisions of the liquor control act; and all powers necessary and proper for the exercise or discharge of any power, duty or function expressly conferred or imposed upon the department by any provision of the liquor control act. \* \* \*”

The powers of the Board of Liquor Control in the Department of Liquor Control are outlined in Section 6064-3, General Code, which reads in part as follows:

“The board of liquor control shall have power:

1. To adopt and promulgate, repeal, rescind, and amend, in the manner herein required, rules, regulations, standards, requirements, and orders necessary to carry out the provisions of this act, including the following:

\* \* \* \* \* \* \* \*

(b) Rules and regulations with reference to applications for and the issuance of permits, for the manufacture, distribution, transportation, and sale of beer and intoxicating liquor, and the sale of alcohol, subject to the provisions of this act; and governing the procedure of the department in the suspension, revocation, and cancellation of such permits.

(c) Rules, regulations, and orders providing in detail for the conduct of any retail business authorized under permits issued pursuant to this act, with a view to insuring compliance with the provisions of this act and other laws relative thereto, and the maintenance of public decency, sobriety, and good order in any place licensed under such permits.

\* \* \* \* \* \* \* \*

(g) Rules and regulations restricting and placing conditions upon the transfer of permits.

\* \* \* \* \* \* \* \*

The foregoing enumeration of powers of the board of liquor control shall not derogate from or prejudice any other power expressly or impliedly granted to the board by any other provision of this act; but excepting as herein expressly provided, the board shall not have or exercise executive or administrative duties or powers.”

The provisions of Sections 6064-3 and 6064-8, General Code, quoted

herein, certainly would not justify the conclusion that the Department of Liquor Control had authority to charge a registration fee of five dollars (\$5.00) for the registration of salesmen employed by "K" permit holders. Moreover, there being no express grant of power in these statutes for the Department to charge the registration fee of the kind mentioned in your letter, there can be no implied power to impose such a fee. Likewise, the power to issue "K" permits does not impliedly authorize the Department of Liquor Control to impose a registration fee for the registration of salesmen employed by the holders of such permits. As a usual rule the imposition and collection of a fee for the registration of a person by a public board or officer is a matter of express statutory authority and is not a power which is generally implied from some express power. See Sections 647, 654-4, 1335-8, 1335-10, 2778, 3006, 5820, 6349 and 13169.

Finding no express or implied authority for the Department of Liquor Control to impose a charge for registration of salesmen of warehouse receipts employed by "K" permit holders, and since any doubt as to the power of a public officer as between himself and the public must be resolved in favor of the public, (*State, ex rel. Bentley vs. Pierce*, 96 O. S. 44, 47) it is my opinion that the Department of Liquor Control cannot impose and charge a fee for the registration of salesmen employed by the holders of "K" permits.

In view of this conclusion it is not necessary to answer your second question. Likewise, I am not at this time passing upon the question of whether the Department of Liquor Control has the authority to compel salesmen of warehouse receipts for whiskey employed by holders of "K" permits to register with the Department of Liquor Control.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

---

4972.

CONSTITUTIONAL PROVISION—SENATE BILL NO. 368, IF ENACTED, CONSTITUTIONAL (O. A. G. 1933, VOL. I, P. 675, AFFIRMED).

**SYLLABUS:**

*Senate Bill No. 368, if enacted into law, will not authorize a reduction of the amount of indebtedness which the state of Ohio may incur under the Constitution, nor would such act in any way impair or reduce the credit of the state of Ohio. (Opinion appearing in Opinions of the Attorney General for 1933, Vol. I, page 675, affirmed).*