

in the exercise of the latter, is a corporate legal entity.”

Likewise in the case of *Toledo vs. Conc*, 41 O. S., 149, the same court said:

“Municipal corporations are agencies or instrumentalities to which the general assembly, vested with the legislative power of the state, delegates a portion of its governmental power, in order to meet those local wants of the people in cities and villages for which state laws make only general provision, leaving a more particular provision to local councils.”

The list or schedule of governmental and proprietary functions herebefore quoted does not include all functions of municipalities but it does enumerate those functions concerning which a doubt might be entertained as to their classification.

This list or schedule is not intended to last for all time. Tomorrow a municipal function might spring into being, not included in such list or schedule, and so close to the borderline that the application of the general rule would not satisfy. In such case it would be necessary to do just what has invariably been done heretofore, namely, go into court for a definition and classification.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1070.

DEALER LICENSED UNDER SECTION 8624-18, GENERAL CODE, MUST FILE APPLICATION TO QUALIFY, WHEN—  
SALES WITHIN AND WITHOUT STATE.

**SYLLABUS:**

1. *Every dealer licensed under the provisions of Section 8624-18, General Code, is required to file an application under Section 8624-49, General Code, to qualify warehouse receipts in order to lawfully sell such warehouse receipts in other than exempt transactions in this state.*

2. *The right to file an application for qualification of warehouse receipts for intoxicating liquor under Section 8624-49, General Code, is*

*restricted to persons desiring to sell such warehouse receipts in this state.*

COLUMBUS, OHIO, August 30, 1937.

HON. DAN T. MOORE, *Chief of the Division of Securities, Columbus, Ohio.*

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

“Section 8624-49 of the Ohio General Code, as contained in Amended Substitute Senate Bill No. 48 and effective on August 23, 1937, provides in part as follows:

‘No person, except those persons participating in transactions specified by Section 4 of the Ohio securities act, shall in this state sell any warehouse receipts for intoxicating liquor except as hereinafter provided until such person shall be licensed under the provisions of Section 18-1 and Sections 18 or 19 of the Ohio Securities Act and shall have qualified such warehouse receipts as hereinafter provided. For the purposes of the Ohio Securities Act the term “security” shall be deemed to include any warehouse receipt for intoxicating liquor and the term “intoxicating liquor” shall include any and all liquids and compounds which contain more than 3.2 percentum of alcohol by weight and are fit for use for beverage purposes.

\* \* \* \* \*

‘Any person desiring to sell warehouse receipts for intoxicating liquor shall file an application with the division of securities in such form as the division may prescribe but which shall contain the following information: \* \* \* \* \*

In view of the foregoing provisions of said Sections 8624-49, your opinion is respectfully requested as to whether the right to file an application under said Section 8624-49 with this Division is restricted to only persons desiring to sell warehouse receipts for intoxicating liquor in other than exempt transactions in the State of Ohio. This question will arise in the event that the issuer of such securities referred to, may desire to file such an application, but does not intend to sell directly to the public.

Your opinion is further respectfully requested as to whether a dealer licensed under the provisions of Section 8624-18 O. G. C., is required to file an application under said Section 8624-49 to qualify warehouse receipts, which have been qualified

prior to such time by another applicant, in order to lawfully sell such warehouse receipts in other than exempt transactions in the State of Ohio.

You will note that the last paragraph of Section 8624-10 O. G. C. provides that in the case of securities qualified in accordance with the provisions of that section, they may be thereafter sold by any licensed dealer upon such dealer giving a written notice of intention to sell such securities, specifying therein the name of the person who qualified such securities and the amount thereof to be offered for sale by him. You will also note that Section 8624-8 O. G. C. provides for a similar procedure in the case of securities registered by description under Section 8624-5 O. G. C."

The purpose of Section 8624-49, General Code, is to regulate the sale of warehouse receipts for intoxicating liquor in the same manner as the sale of other securities. The legislature in enacting the foregoing section specifically provided that "For the purposes of the Ohio Securities Act the term 'security' shall be deemed to include any warehouse receipt for intoxicating liquor."

The portion of Section 8624-49, General Code, quoted in your letter provides without any qualification that:

"Any person desiring to sell warehouse receipts for intoxicating liquor shall file an application with the division of securities \* \* \*"

This application is required to contain certain information for the purpose of assisting the Division of Securities to determine whether or not the warehouse receipts for intoxicating liquor will be sold in this State on grossly unfair terms or in a method or manner or on terms that might defraud or deceive purchasers in this State. It would seem that the above quoted language, together with the language used in the first part of Section 8624-49, General Code, which provides that "No person \* \* shall in this state sell any warehouse receipts for intoxicating liquor \* \* until such person shall be licensed" as a dealer and "shall have qualified such warehouse receipts \* \*," would require more than one qualification of the same warehouse receipts for intoxicating liquor. At first blush, it would appear that such a requirement would be absurd in that it is contrary to all other provisions of the Ohio Securities Act which provide for the qualification of securities and which require only one registration whether or not such registration be by description or by qualification. Under such other provisions of the Ohio Securities

Act a licensed dealer, upon giving written notice to the Division of Securities, may sell securities once registered without again registering such securities. However, an examination of the provisions of the Ohio Securities Act, including Section 8624-49, General Code, which became effective August 23, 1937, reveals that the legislature intended a different result when warehouse receipts for intoxicating liquor are registered by qualification.

You refer to Sections 8624-8 and 8624-10, General Code. The first section provides for registration by description of securities specified in Section 8624-5, General Code. Section 8624-10, General Code authorizes the registration of securities by qualification. Under both of these sections any licensed dealer may sell securities once registered, provided such dealer gives written notice of intention to sell such securities, specifying therein the name of the person who qualified such securities and *the amount thereof to be offered for sale by him*. The language employed by the legislature clearly indicates that the procedure outlined in the foregoing sections applies only to dealers desiring to sell the specific securities registered by description under Section 8 or by qualification under Section 10 of the Ohio Securities Act. It is quite apparent that the purpose of such a requirement is in furtherance of the regulatory provisions of the Ohio Securities Act. I find on such requirement in Section 8624-49, General Code.

The question then presents itself, in what manner would the Securities Division be in position to regulate the sale of warehouse receipts for intoxicating liquor for the purpose of determining the amount of warehouse receipts to be sold by a dealer other than a dealer who qualified same. The answer, in my opinion, is found in the clear and unambiguous language employed by the legislature in that portion of Section 8624-49, General Code, quoted in your letter. It is a general rule of statutory construction that the General Assembly will not be assumed or presumed to have intended to enact a law producing unreasonable or absurd consequences. However, in 36 O. Jur., page 6-49, I find the following language with authorities cited:

“The legislature is primarily the judge of the reasonableness of a statute, and a courts’ notion of the absurdity of a statutory provision ought not to weigh against its plain meaning. Accordingly, where a statute is plain and unambiguous in its terms and not susceptible of more than one construction, the court, in construing the law, may not take into consideration the unreasonableness of, or the absurd consequences produced by, its provisions.”

The legislature is presumed to have known at the time it enacted Section 8624-49, General Code, that but one qualification was necessary under the provisions of the Ohio Securities Act and that dealers were required to file with the Division of Securities a notice of intent to sell securities once registered. It could have used similar language in enacting the provisions of the Ohio Securities Act relating to warehouse receipts for intoxicating liquor. The legislature, in failing to do so, clearly showed that another result was intended. In 36 O. Jur., page 566, the following appears:

“In the interpretation of statutes, the fact is sometimes mentioned that if the legislature had intended to enact a law as interpreted it could not easily have chosen more appropriate language. On the other hand, reference is occasionally made to the fact that if the legislature intended a particular interpretation which is suggested it could easily have found apt words or phrases to express it—especially where it appears that the conditions or circumstances of the suggested interpretation were not unknown to the legislature, which had previously, or subsequently, or in another connection used such apt phraseology. However, the use of such apt terms in other statutes does not furnish a conclusive rule of construction.”

In view of the above, it would seem that the legislature in enacting Section 8624-49, General Code, intended that every dealer desiring to sell warehouse receipts for intoxicating liquor should file an application with the Division of Securities for the purpose of qualifying such warehouse receipts. Such a requirement in the absence of any other regulatory provision requiring a dealer to file notice of intention to sell securities would afford the Division of Securities an opportunity to determine the amount of warehouse receipts to be sold by such dealer and whether or not such receipts will be sold in this state on grossly unfair terms or in a method that might defraud or deceive purchasers in this state. Then again there is a further provision in Section 8624-49, General Code, which in my opinion, shows the necessity of the filing of an application for qualification by each dealer selling warehouse receipts for intoxicating liquor. This provision is as follows:

“The division may suspend and revoke the qualification of and the right to sell any warehouse receipt for intoxicating liquor registered by qualification in the manner and for the reasons set forth in Section 16 of the Ohio Securities Act, and any license may be suspended and revoked in the manner and for the reasons

set forth in Section 22 of said act. For the purposes of this section, the division may regard either the distiller or the warehouse company as being the 'issuer' of warehouse receipt."

Section 16 mentioned in the foregoing provision is Section 8624-16, General Code, which in part reads as follows:

"The division may suspend the qualification of and the right to sell any security registered by qualification by giving notice to that effect to the issuer and/or applicant for qualification and to all dealers who have given notice of intention to sell the same; and, after notice and hearing, may revoke such qualification and right to sell if it shall appear that the issuer:

Is insolvent; or

Has violated any of the provisions of this act or any order of the division; or

Is fraudulently conducting its business; or

Has offered securities on grossly unfair terms; or

Has been or is engaged or is about to engage in deceptive or fraudulent acts, practices or transactions."

It is quite apparent from a reading of the above section that the Division of Securities may suspend the qualification and the right to sell any security by giving notice to that effect not only to the issuer and applicant for qualification, but to all dealers who have a right to sell such securities. In the absence of any provision requiring the filing of notice of intention to sell certain warehouse receipts and unless every dealer is required to file an application for qualification of warehouse receipts, the Division of Securities would not be in position to comply with the provisions of Section 8624-16, *supra*, and notify all persons selling certain warehouse receipts that the qualification of such receipts and the right to sell same was suspended. Such a result would not only prevent the Division of Securities from regulating the sale of warehouse receipts for intoxicating liquor but would be contrary to the intent and purpose of the Ohio Securities Act.

You raise the question as to whether or not the right to file an application under Section 8624-49, General Code, is restricted to persons desiring to sell warehouse receipts for intoxicating liquor in other than exempt transactions. You state that the question will arise in the event that an issuer of warehouse receipts may desire to file an application for the qualification of same but does not intend to sell directly to the public. The filing of the application for qualification of warehouse receipts for intoxicating liquor is limited under Section 8624-49, General Code,

to any person desiring to *sell* such warehouse receipts. It is quite evident that if an issuer of warehouse receipts were to sell such warehouse receipts in this state, not only would he be required to file an application for the qualification of such warehouse receipts, but he would also be required to obtain a dealer's license. The legislature is providing the manner in which warehouse receipts for intoxicating liquor may be qualified in this state is presumed to have intended that particular method to the exclusion of any other. The maxim "expression unius est exclusio alterius" has direct application. The Supreme Court of Ohio in the case of *Cincinnati vs. Roettinger*, 105 O. S. 145, in referring to the above maxim said at page 152:

"That maxim has peculiar application to any statute which in terms limits a thing to be done in a particular form, and in such case it necessarily implies that the thing shall not be done otherwise."

Specifically answering your question it is my opinion that:

1. Every dealer licensed under the provisions of Section 8624-18, General Code, is required to file an application under Section 8624-49, General Code, to qualify warehouse receipts in order to lawfully sell such warehouse receipts in other than exempt transactions in this state.

2. The right to file an application for qualification of warehouse receipts for intoxicating liquor under Section 8624-49, General Code, is restricted to persons desiring to sell such warehouse receipts in this state.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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1071.

CONTRACT AGREEING TO REPAIR MOTOR VEHICLE  
AMOUNTS TO INSURANCE, WHEN.

*SYLLABUS:*

*Where a company, in consideration of a specified amount payable in advance together with a certain co-operative charge payable when service is rendered, issues a contract whereby it agrees to repair certain described parts of a motor vehicle damaged as a result of an accident, it is*