

haul or transport for hire the goods or wares of another under a contract and who do not engage in the business of transportation for hire of goods or persons for the public generally. The use of the word "contract" to qualify the word "carrier" must also be given some significance, because, as stated in *The Local Telephone Company vs. Mutual Telephone Company*, 102 O. S., 524, at 530:

"To constitute a valid contract, there must be parties capable to contract, a lawful subject-matter, a sufficient consideration, and an actual agreement to do or forbear from doing some particular thing."

It therefore follows that the term "contract carrier" was not intended to apply to a person who transported his own goods or wares. In other words, a person could not be a contract carrier as the result of dealing with himself, since there would be a want of contracting parties who have for a sufficient consideration agreed to do a particular thing in reference to the transportation of goods. That the term "contract carrier" was intended by the legislature to be restricted to persons in the business of transporting goods for hire, is further supported by the fact that section 6064-1, General Code, does not read that a contract carrier shall be any person engaged in the transportation of beer or intoxicating liquor purchased or to be purchased from him in furtherance of his right to sell beer or intoxicating liquor.

From a reading of the entire Liquor Control Act, and especially sections 6064-1, 6064-15 and 6064-55, it is quite clear that the provisions of sections 6064-1 and 6064-15 relating to contract carriers, do not include within their terms persons who transport and deliver their own malt and vinous products in their own trucks for their own purposes or to their customers.

Specifically answering your inquiry, I am of the opinion that the term "contract carrier" as used in sections 6064-1 and 6064-15, General Code, means any person not a public or common carrier, engaged in the business of transporting for hire beer or intoxicating liquor, and does not include within its term manufacturers or wholesale distributors of beer who transport and deliver their own products to their customers by their own trucks as an incident in the sale of such beverages. Under sections 6064-1 and 6064-15, General Code, the Department of Liquor Control can issue H permits to common and contract carriers only, and the Department has no authority to issue an H permit to a manufacturer of beer who delivers or transports such beverage by his own motor vehicles to his customers.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3931.

APPROVAL, NOTE OF JEFFERSON TOWNSHIP RURAL SCHOOL DISTRICT,
FRANKLIN COUNTY, OHIO, \$5,000.00

COLUMBUS, OHIO, February 9, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3932.

APPROVAL, BONDS OF LIBERTY TOWNSHIP RURAL SCHOOL DISTRICT,
TRUMBULL COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, February 9, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3933.

BOARD OF EDUCATION—DISQUALIFICATION OF BOARD MEMBERS SUC-
CEEDED BY NEW BOARD DOES NOT DISQUALIFY CLERK APPOINTED
FOR TWO-YEAR TERM BY ORIGINAL BOARD.

SYLLABUS:

In the event all the members of a board of education become disqualified for any reason to further serve as such members of the board and an entirely new board of education is appointed to succeed the board whose members so became disqualified, the clerk who had been appointed by the original board at its organization meeting in January, 1934, for a term of two years, is entitled to the position in accordance with his original appointment.

COLUMBUS, OHIO, February 11, 1935.

HON. LELSTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"In January, 1934, the Board of Education of S. Township appointed a clerk for two years. The clerk qualified and gave bond which called for a two year term. In December, 1934, the County Board of Education created a new district and placed a large part of S. Township in the new district. It so happened that all the former members of the Board of Education of S. Township resided in the newly created district. None of them were therefore eligible to serve as board members of the remainder of S. Township, and the county board of education appointed an entirely new board for S. Township.

This new board appointed a different clerk and the clerk of the former board refuses to give the books and records up, and claims that he was appointed for two years, has given bond and qualified, and served a part of this term, and claims that the new board as a successor to the old board of S. Township is bound to retain him until the expiration of his term.

The exact question I desire to have answered is whether the clerk appointed by the old S. Township Board of Education is still the clerk of the new S. Township Board of Education?"

The situation which prompts your inquiry is somewhat unique to say the least. I know of no other instance where such a situation has arisen and therefore, no direct precedent is available. The fact that a portion of the S. Township Rural School District was transferred out of the district did not have the effect of destroying the S. district. The territory remaining after the transfer was made, is the S. township rural