

## O P I N I O N S

### EXECUTIVE ORGANIZATION:

Department of Commerce  
Liquor Control Commission

Discussion of functions of Department of Commerce and Liquor Control Commission and its business manager under Executive organization act of 1965.

No. 4610

January 6, 1969.

Representative William R. Copeland  
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Wyandotte, Michigan

This is in reply to your request for my opinion as to the relationship between the Department of Commerce and the Liquor Control Commission in view of the Executive organization act of 1965, Act 380, P.A. 1965, as amended; M.S.A. 1968 Cum. Supp. § 3.29(1) et seq.

You have asked the following six questions:

"1. Whether under the terms of Article IV, Sec. 40, Constitution of 1963, which reads:

'The legislature may by law establish a liquor control commission which, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof. The legislature may provide for an excise tax on such sales. Neither the legislature nor the commission may authorize the manufacture or sale of alcoholic beverages in any county in which a majority of the electors voting thereon shall prohibit the same.'

any of the functions of the Liquor Control Commission relative to the alcoholic beverage traffic within the state are transferred to the Department of Commerce under Act 380, P.A. 1965?

"2. Whether any of the duties and responsibilities of the Business Manager, as set forth in Section 5b of the liquor law, are properly to be viewed as so-called housekeeping matters and thus transferred to the Department of Commerce?

"3. Whether any of the duties and responsibilities of the Business Manager, as set forth in Section 5b of the liquor law, are transferred to the Department of Commerce?

"4. Whether any of the functions of the Liquor Control Commission except housekeeping matters, rule making, licensing and adjudication are transferred to the Department of Commerce?

"5. Whether any of the record-keeping functions of the Liquor Control Commission, including machine process and data systems in the areas of purchase, inventory and sales of alcoholic liquors are transferred to the Department of Commerce?

"6. Whether any of the record-keeping duties of the Business Manager as to personnel matters, including process and data systems, are transferred to the Department of Commerce?"

Before consideration of your question seriatim, it will be helpful to provide certain background material.

Authority for establishment of the Liquor Control Commission first appeared in the Constitution of 1908 in Article XVI, Section 11, which was proposed by initiative petition and ratified at the general election November, 1932.

This provision of the 1908 Constitution was continued in the Constitution of 1963 as Article IV, Section 40, except for slight changes in grammatical construction.

Pursuant to the earlier provision of the 1908 Constitution, the legislature enacted the Michigan liquor control act, Act 8, P.A. 1933 (Ex. Sess.) as amended; M.C.L.A. § 436.1 et seq.; M.S.A. 1957 Rev. Vol., 1968 Cum. Supp. and Curr. Mat. § 18.971 et seq.

Section 1 of the liquor control act, supra, reads in part:

"On and after the effective date of this act, it shall be lawful to manufacture for sale, sell, offer for sale, keep for sale, possess and/or transport any alcoholic liquor, as hereinafter defined, including alcoholic liquor used for medicinal, mechanical, chemical or scientific purposes and wine for sacramental purposes, subject to the terms, conditions, limitations and restrictions contained herein, and only as provided for in this act.

"Except as by this act otherwise provided, the commission shall have the sole right, power and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within the state of Michigan, including the manufacture, importation, possession, transportation and sale thereof.

" \* \* \* "

Other pertinent sections of the act read:

"Sec. 3. Excepting as otherwise provided in this act, no sale or delivery of alcoholic liquor, other than beer, or wine, shall be made in this state unless such sale or delivery is made by the commission, or its authorized agent or distributor. All alcoholic liquor, other than beer or wine of an alcoholic content of 16% or less, by volume for sale, use, storage or distribution in this state, shall originally be purchased by and imported into the state by the commission, or by prior written authority of the commission. \* \* \*"

"Sec. 5. A commission to be known as the liquor control commission of the state of Michigan is hereby created. \* \* \*"

"Sec. 10. The commission is hereby authorized to maintain a revolving fund which fund is to be derived from the money deposited to the credit of the commission with the state treasurer. \* \* \* The fund herein provided for is to be exclusively used for the purpose of replenishing, maintaining, warehousing and transporting the liquor stock into the various state liquor stores throughout the state. A

monthly report thereof shall be made to the state treasurer and to the budget director which shall contain an itemized account of all moneys received and all expenditures made by the commission during the month covered in the report."

"Sec. 13. The commission may establish state liquor stores throughout the state of Michigan: Provided, That in counties under forty thousand [40,000] population according to the last federal census there shall be no more than one [1] store in any such county, except as hereinafter provided: Provided further, That in counties of forty thousand [40,000] population or over according to the last federal census such stores shall not exceed one [1] for each forty thousand [40,000] population or major fraction thereof according to the last federal census, except as herinafter provided: Provided, however, That the commission may in its discretion establish a state liquor store in any village or city of three thousand [3,000] population or over according to the last federal census."

"Sec. 15. The commission shall have the right and power to buy, have in its possession and sell in its own name all alcoholic liquor for distribution as provided in sections 13 and 14. It shall be the duty of the commission to supply such types of alcoholic liquors as shall be demanded by the public: Provided, however, That if any such brands as are demanded are not manufactured within the borders of the United States or are not readily obtainable within the borders of the United States, then such orders shall be filled by the commission at the entire expense of the person placing such order, plus not less than 46 per cent gross profit, subject to any discounts provided for in section 16 of this act. \* \* \*"

"Sec. 16. The commission shall establish uniform prices for the sale of alcoholic liquor in state liquor stores, and by specially designated distributors. \* \* \*"

"Sec. 48. All moneys received by the commissioner under the provisions of this act, shall be turned over monthly to the state treasurer, and credited to the general fund, to be disbursed according to law."

Following adoption of the constitutional provision and enactment of enabling legislation, the Michigan Supreme Court had occasion to review the powers and duties of the Liquor Control Commission pursuant thereto. One of the earliest of such cases was *Johnson v. Liquor Control Commission* (1934), 266 Mich. 682, 684-685, in which the Court stated:

"The constitutional amendment adopted at the general election on November 8, 1932, and known as article 16, § 11, of the State Constitution, is as follows:

" 'The legislature may by law establish a liquor control commission, who, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within the State,' etc.

"It will be noted that the amendment gives to the legislature the right to impose such limitations as it may deem proper upon the control to be exercised by the commission. Accordingly, the legislature has provided in Act No. 8, § 20, *supra*, that the liquor control commission

may revoke licenses for any violation of the provisions of the act, but requires the commission to provide a proceeding by which any licensee claiming to have been aggrieved may have a hearing, etc. \* \* \*.

"We believe that this latter provision is not an invalid delegation of power. It is merely a statutory limitation properly imposed by the legislature, in accordance with the constitutional mandate, upon the power to be exercised by the commission. \* \* \*."

Subsequently, in *Dave's Place, Inc., v. Liquor Control Comm.* (1936), 277 Mich. 551, it was contended by the commission that the constitutional provision gave the liquor control commission when created absolute and arbitrary control over the traffic of alcoholic beverages in the state (pp. 553, 554). But the Court rejected this contention and pointed out instead that: "\* \* \* The 'complete control' granted by constitutional amendment is 'subject to statutory limitations.'" (p. 555)

Following these cases the Michigan Supreme Court further pointed out in *Terre Haute Brewing Co., Inc., v. Liquor Control Commission* (1939), 291 Mich. 73:

"\* \* \*. *Except as limited or defined by statute*, the Constitution itself vests the statutory commission with plenary power to control alcoholic beverage traffic in this State. This appears from the constitutional provision hereinbefore quoted. And such is our holding in *Scott v. Township Board of Arcadia Township*, 268 Mich. 170; *Noey v. City of Saginaw*, 271 Mich. 595.

"\* \* \*

"The constitutional provision that the commission 'shall exercise complete control of all alcoholic beverage traffic within this State, including the retail sales thereof,' is *limited only by express provisions or necessary implications embodied in the legislative act (as amended) by which the commission was created and its powers, duties and limitations prescribed.*" (emphasis added) (pp. 78, 79)

In *Black v. Liquor Control Commission* (1948), 323 Mich. 290, where the right of the state to go into the liquor business was challenged, the Court said:

"\* \* \*. Complete control can only be exercised by one who enjoys unlimited freedom and scope of activity. Therefore, we must hold that such control carries with it the power, *unless limited by specific legislation*, to engage in the business of buying, selling, storing, et cetera, of liquor." (emphasis added) (p. 299)

Provision for the liquor control business manager appears in Sec. 5b of the Michigan liquor control act, *supra*, and this section reads:

"Sec. 5b. The powers of the commission, enumerated in this act, which are not specifically and exclusively reserved to the commission by the act, shall be vested in, and exercised and administered by a liquor control business manager, who shall be selected by and responsible to the commission, and whose position shall be in the state classified civil service. The powers of the commission enumerated in, and provided for by this act, shall be exercised in conformity with the

provisions of the act pertaining to the duties of the liquor control manager: Provided, however, That the commission shall exclusively exercise the power to make rules and regulations under the act to regulate the control of the alcoholic beverage traffic within the state; to hear and decide all cases of violation of the provisions of the act and regulations thereunder; to employ a liquor control business manager as provided for by the act; and to hear and decide all public appeals from the administrative decisions of the liquor control business manager.

"The liquor control business manager shall be and shall serve as the business manager of the liquor control commission, and as such it shall be his duty and responsibility to manage the business affairs of the commission relative to purchasing, merchandising, warehousing, rationing, distributing, inspecting, investigating, licensing and accounting, in accordance with policies established by the liquor control commission and in compliance with the provisions of this act and with the rules and regulations adopted thereunder. In addition to the foregoing, said business manager shall be exclusively responsible for the assigning, training and supervision of all commission classified employees."

Turning now to the statutory limitations placed upon the Liquor Control Commission, pursuant to the mandate of Article V, Section 2 of the Constitution of 1963,<sup>1</sup> the legislature enacted the Executive organization act, Act 380, P.A. 1965, as amended; M.C.L.A. § 16.101 et seq; M.S.A. 1968 Cum. Supp. § 3.29(1) et seq; and Sec. 230 thereof specifies:

"The state liquor control commission created by section 5 of Act No. 8 of the Extra Session of 1933, as amended, being section 436.5 of the Compiled Laws of 1948, is transferred by a type I transfer to the department of commerce."

And Section 226 thereof provides that:

"The head of the department of commerce is the director of commerce."

Absent from the Executive organization act, supra, is any reference to the business manager of the Liquor Control Commission.

Section 3 (a) of the Executive organization act, supra, defines a type I transfer in the following terms:

"Under this act, a type I transfer means the transferring intact of an existing department, board, commission or agency to a principal

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<sup>1</sup> Article V, Section 2, states:

"All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

" \* \* \* "

department established by this act. When any board, commission, or other agency is transferred to a principal department under a type I transfer, *that board, commission or agency shall be administered under the supervision of that principal department.* Any board, commission or other agency granted a type I transfer shall exercise its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department. Under a type I transfer *all budgeting, procurement and related management functions of any transferred board, agency or commission shall be performed under the direction and supervision of the head of the principal department.*" (emphasis added)

Far from disposing of the many problems inherent in such sweeping administrative changes, this provision raised many questions and was the subject of extended discussion in Opinion No. 4479, O.A.G. 1965-1966, p. 209. Therein I concluded:

"By way of summary, a Type I transfer under the Executive organization act of 1965 places the board, office, commission or agency intact within the principal department to which it has been transferred. Under the Act each board, office, commission or agency having a Type I transfer is subject to having its policy determinations and its functions administered under the supervision of the principal department head except those policy determinations and functions which may be exercised independently within the authority of the third sentence of Section 3 (a) of the Act. The statutory powers, duties and functions which may be exercised independently of the department head pursuant to the legislative directive of the third sentence of Section 3 (a) of the Act are retained and may be performed by the transferred agency without interference or supervision by the head of the department. This is but to say that within these categorical areas, the Type I agency acts independently of the department head and it necessarily follows that the head of the department is freed from responsibility for such independent action." (p. 215)

It now remains to apply these general principles to the specific concerns of the Liquor Control Commission and I will do so by answering each of your six questions in the order presented.

1. The functions of the Liquor Control Commission relative to the importation, sale and delivery of alcoholic liquor, continue to rest within the authority of the Liquor Control Commission, to be performed by the Commission independently of the principal department head.

This conclusion rests upon the constitutional provision which provided for establishment of the Commission. As noted above, Article IV, Section 40 of the Constitution of 1963 provides that the Commission "shall exercise complete control of the alcoholic beverage traffic within this state, *including the retail sales thereof.*" (emphasis added) Thus, despite the qualification in the same section that the exercise of such complete control is "subject to statutory limitations," it would be beyond the power of the legislature to transfer the function of controlling the alcoholic beverage traffic to another

department. However, the phrase in Article IV, Section 40 of the Constitution, "subject to statutory limitations," does empower the legislature to determine the means by which the exercise of complete control is to be carried out by the Commission. Viewed in this light, the provisions of Section 3(a) of the Executive organization act, supra, which provide that "all budgeting, procurement and related management functions" of the Commission shall be performed under the direction and supervision of the head of the Department of Commerce are entirely consistent with the constitutional language.

I presume that there is no doubt of the responsibility and power of the Liquor Control Commission to continue to exercise its rule-making and regulatory functions and I therefore feel that it is unnecessary to detail these functions of the Commission as set forth in Sections 7, 7a, 8, 9, 13, 14, 16, 17, 17d, 17e and 20 of the Michigan liquor control act, supra, since it is clear that the powers, duties and functions set forth in these sections are to be performed by the Commission independently of the supervisory powers of the principal department head.

Nevertheless, the language of Sections 3 (a) of the Executive organization act, supra, which provides that "Under a type I transfer all budgeting, procurement and related management functions of any transferred \* \* \* commission shall be performed under the direction and supervision of the head of the principal department" must be given meaning and effect. Thus, the Department of Commerce has the statutorily endowed power in so doing may provide for a single department head responsible for all to consolidate certain of the administrative functions under its control and of the general management services of the department, including budgeting, procurement and other related management functions.

I have been informed by the Director of the Department of Commerce that his department plans to establish a Personnel Section of General Services, a Finance Section of General Services, a Management Systems Section liquor. This in effect means that the maintenance of *all records* are subject of General Services, an Office Services Section of General Services, and a Budget Officer. Each of these sections of the Department of Commerce shall coordinate all of these management activities of the department and it is my opinion that the personnel of the Liquor Control Commission are subject to the direction and supervision of the head of the principal department within these described areas although, as provided in Section 7a of the Executive organization act, supra, the substantive functions vested by law may not be removed from the jurisdiction of the Liquor Control Commission.

A more detailed description of the supervisory functions which may be performed by the principal department head over the Liquor Control Commission was incorporated in a letter from the Director of the Department of Commerce to the State Budget Director and the relevant portion of this letter is attached hereto as Appendix A.

2. and 3. Because of the similarity between your second and third questions, I am taking the liberty of combining them and treating them together. Both questions deal with the duties and responsibilities of the

business manager of the Liquor Control Commission and both seek the determination of which of these duties are "transferred."

In general, pursuant to Sec. 5 (b), the business manager continues to exercise those powers of the commission "which are not specifically and exclusively reserved to the commission" by the Michigan liquor control act, supra. It is still his duty and responsibility to manage the purchasing, merchandising, warehousing rationing and distribution of alcoholic liquor as well as to manage inspection, investigation and licensing of the liquor industries in this state in accordance with the statute and the policies established by the Liquor Control Commission.

However, as a result of the type I transfer of the Liquor Control Commission to the Department of Commerce by Section 230 of the Executive organization act, supra, certain of his duties and responsibilities are now subject to be performed by him under the direction and supervision of the Director of the Department of Commerce. Generally these duties and responsibilities have been donated as the "budgeting, procurement and related management" functions; specifically these include those functions which, in reply to your first question, I noted were transferred from the Commission to the Department of Commerce. Thus the Department of Commerce has the power and authority to establish and, by so doing, centralize the following functions:

- a. A personnel program for the entire department;
  - b. A program for uniform and systematic keeping of records of the entire department;
  - c. A program of analysis and evaluation of systems for the entire department;
  - d. A procurement policy for purchase of supplies, material and contractual services with the exception of purchasing, merchandising, warehousing and rationing of alcoholic liquor which, as I have said, is an independent statutory power of the Liquor Control Commission; and
  - e. Budget preparation, planning and analysis for the entire Department of Commerce.
4. This answer to this question is covered by my answer to question 1.
5. The record keeping functions of the Liquor Control Commission including machine process and data systems in all areas, are subject to performance under the direction and supervision of the Director of the Department of Commerce; this includes the purchase, inventory and sale of alcoholic liquors. It should be noted, however, that in exercising his authority to direct and supervise these record-keeping activities, the director may not impede or in any way interfere with the substantive functions of the Commission which include the purchase, inventory and sale of alcoholic to direction and supervision of the director of the Department of Commerce, but that access to and use of all necessary records must be made available to the commission and its business manager, in a manner so that their operation will not be hindered and so that they may carry out their constitutional and statutory responsibilities.
6. Since the business manager of the Liquor Control Commission



administers the powers of the commission with respect to its record-keeping functions, my answer to the preceding question is dispositive of your sixth question and it is unnecessary to repeat my response.

I am aware that certain administrative duties and responsibilities of the business manager now subject to the direction and supervision of the Director of the Department of Commerce were duties and responsibilities which, under the provisions of the Michigan liquor control act, supra, were exercised exclusively by the business manager. For example, the provision in the last sentence of Section 5b of the act states that the "business manager shall be exclusively responsible for the assigning, training and supervision of all commission classified employees." However, it is a recognized rule of statutory construction that where two statutes are repugnant to each other, the last one passed will govern as the latest expression of the legislative will.

*Port Huron Engine & Thresher Co. v. Township of Port Huron* (1916), 191 Mich. 590;

*Detroit United Railway v. Barnes Paper Co.* (1912), 172 Mich. 586;

*Belding Land & Improvement Co. v. City of Belding* (1901), 128 Mich. 79.

Therefore although certain duties and responsibilities are exclusively vested in the Liquor Control Commission and its business manager by the Michigan liquor control act, supra, to the extent that the exclusive performance of these duties and responsibilities is repugnant to the provisions of the Executive organization act, supra, the provision of the former statute is repealed by implication.

FRANK J. KELLEY,  
*Attorney General.*

#### APPENDIX A

Letter dated June 23, 1967 from Herbert C. DeJonge, Director, Department of Commerce, to Glenn S. Allen, Jr., State Budget Director.

Description of each section of the General Services Program including the responsibilities of each section together with a listing of the responsibilities of the Budget Officer:

##### *Personnel Section of General Services*

(1) Under the general direction of the Administrative Officer for General Services, this section develops, directs and implements the personnel program for the entire State Department of Commerce; (2) advises management in all areas on personnel policies and procedures; (3) conducts studies, makes recommendations of adjustment, and implements programs concerning organization, staffing patterns, employee utilization and workload, position classification and class examinations; (4) directs the processing of all personnel transactions, payrolls, personnel record keeping, insurance, longevity, retirement and leave; (5) maintains Departmental liaison with Civil Service Commission