If the Legislature had intended a repeal of the statutes regarding forestry products then such an intention should have been expressed in clear and unambiguous language. There is a rule of statutory construction, well established in Indiana, to the effect that if a general statute on a subject does not contain an express repealing clause, such statute will not ordinarily repeal a prior special statute on the same subject, but both statutes remain in force and are to be considered together:

Morris v. State ex rel. Brown (1884), 96 Ind. 597;
Walter v. State (1886), 105 Ind. 589, 5 N. E. 735;
Straus Bros. Co. v. Fisher (1928), 200 Ind. 307, 163 N. E. 225;
Gaddis v. Board of County Comrs. (1932), 93 App. 658, 179 N. E. 279;

In a practical appraisal of the unique and isolated problems arising in the operation of the Forestry Division of the State, and with a full consideration of the aforequoted sections of the Financial Reorganization Act and the applicable rules of statutory construction, it compels my opinion that the intention of the Legislature in the enactment of the Act, was that it not apply to the sale of forest products by the Forestry Division of the Indiana Department of Conservation.

OFFICIAL OPINION NO. 43
August 8, 1950.

Bernard E. Doyle, Chairman,
Indiana Alcoholic Beverage Commission,
201 Illinois Building,
Indianapolis, Indiana.

Dear Sir:

We have your request for an official opinion which reads as follows:

"The Alcoholic Beverage Commission desires your official opinion, in regard to Wine Wholesaler permits,
as covered by Section 12-521 in Burns Indiana Statutes, Annotated 1933.

"The said above Statute provides, in substance, that a Wine Wholesaler permit shall be issued only to permittees holding a Beer Wholesaler permit, or a wholesaler holding an alcoholic spirituous beverage permit. The first question is:

"Can a person who applies for a Beer Wholesaler permit, who does not sell beer at wholesale, but only holds such permit so as to obtain a Wine Wholesaler permit, qualify to hold a Wine Wholesaler permit? In other words, does he have to actually engage in the wholesale beer business?

"The Statute further provides, in substance, that the holder of a Wine Wholesaler permit shall have the right to sell, furnish and/or deliver same to persons holding a dealer's wine permit or a retailer's vinous permit, but not at retail. The second question is:

"Can such a Wine Wholesaler sell wine to a Beer Wholesaler or to a Liquor Wholesaler?

"The third question is:

"Can a Wine Wholesaler, bottle wine for a winery or another Wine Wholesaler, the wine being furnished by such other person or persons to be bottled with their own private label?

"The fourth question is:

"Can a Wine Wholesaler sell and ship wine outside of the state of Indiana?"

Section 12-521, Burns 1942 Replacement insofar as same is pertinent, reads as follows:

"The said license fee mentioned herein shall be additional to any license fee required for the issue of any other permit. The holder of a wine wholesaler's permit shall have the exclusive right to import and/or transport alcoholic vinous beverages from any other state or county into the state of Indiana and to bottle or place the same in different containers from that
in which such alcoholic vinous beverages were imported into the state of Indiana and to sell, furnish, and/or deliver the same to persons holding a dealer's wine permit or a retailer's vinous permit but not at retail. All transportation thereof shall be in such barrels, or casks, or bottles or containers as are permissible under the rules and regulations of the commission and which the commission may require to be stamped, labeled, marked, and/or designated, or bear or display any other identification, label or device.

“Said wine wholesaler's permit shall also authorize the holder to sell and deliver alcoholic vinous beverages to a customer at his residence in any quantity at any one time not exceeding fifty (50) gallons in bottles or other permissible containers. (Acts 1935, ch. 226, § 22, p. 1056; 1939, ch. 30, § 4, p. 79.)”

Your problem is not only one of statutory interpretation but whether the law transcends the constitutional powers of the state legislature, or whether it contravenes the state or Federal Constitution.

A.

Police Power—as same pertains to Regulation of Intoxicating Liquor and Traffic Therein.

Although intoxicating liquor and traffic therein, where permitted or tolerated, are as lawful as any other property or business and as fully entitled to protection, yet the liquor traffic is admittedly dangerous to public health, safety and morals. It is therefore essentially within, and its regulation or prohibition is fully justified under, the police power, which inheres in the state and nation within their respective spheres. 30 Am. Jur. Sec. 22, page 264.

In the case of Schmitt, Supt. v. F. W. Cook Brewing Co. 187 Ind. 623, wherein they had before them the constitutionality of the Prohibition Law of 1917, the Court said:

"** This court has nothing to do with the wisdom or unwisdom of the legislative act. A law may be
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repugnant to general principals of judgment, liberty and rights not expressed in the Constitution, and yet the courts have no power to strike it down. * * * The remedy in such a case is with the people in the legislative department or in convention forming a new Constitution. * * *

"No provision of our Constitution has been pointed out which forbids the passage of laws to protect the health, morals, or welfare of the people in connection with the traffic in intoxicating liquor, even though such laws destroy previously recognized property without paying for it. That the liquor traffic is within the police power of the state no one denies. When this is admitted, there must follow the power to take such steps as are reasonably suitable to carry out this purpose.

"* * * Charter rights, license rights, contract rights are all subject to the inherent power of government to protect the health, morals, or welfare of the public. * * *

"* * *

"* * * The principle of stare decisis, if it existed, has no application to the police power, because there can be no property rights which are not subject to this power. * * *

"* * * When an act of the general assembly is passed, which violates no provision of the federal or state Constitution, the judicial department cannot hold it to be void on the ground that it is wrong, or unjust, or violates the spirit of our institutions.

"* * * this court has repeatedly said the subject of the control of intoxicating liquor is entirely within the power of the people through the legislature to do anything that they deem necessary, not only to prohibit the sale but in order to effectuate that purpose to even prohibit the manufacture of intoxicating liquor within the state. * * * 'All laws regulating and imposing burdens on the business are prohibitory in their charac-
There is no difference between an absolute prohibitory law, a law providing for local option, and license law, except in the extent to which they prohibit the manufacture and sale of intoxicating drinks. An absolute prohibitory law deprives all within its reach from engaging in the business; a local option law prohibits all within a given locality from selling within that locality; while a license law prohibits all within the State, who have not obtained a license, from engaging in the business of retailing intoxicating liquors. Each of these is a restriction upon the common law right of the individual citizen.' In the case of State v. Gerhardt, 145 Ind. 439, this court used the following language: 'Acting upon the just assumption that the unrestricted sale of intoxicating liquors results in much evil, and that it is detrimental to society, the law-making power of each State in the Union has, in the exercise of its police power, assumed to control, regulate or prohibit the business, as seemed to it best.' * * * And in the case of Sopher v. State (1907), 169 Ind. 177, this court said: 'The right to pursue such vocation was not of such an inherent or inalienable nature as to place the business beyond the control of the legislative department. The latter might, in the exercise of its discretion, under the police power, in the interest of society and the public in general, either suppress or prohibit the traffic entirely, or permit it to exist under such necessary restrictions, regulations and burdens as might be deemed proper to impose in order to mitigate or minimize the evils resulting from the traffic, and as against the validity of such laws enacted by the legislature, the liquor dealer was not in a position to assert any inherent or inalienable right to the contrary.'

"* * *

"* * * It will be seen by the authorities which we have heretofore set out that to prohibit the traffic the legislature may define as an intoxicant that which is far from intoxicating, in order to prevent the manufacture and sale of that which is intoxicating; that it may prevent the possession of liquor; that it may provide that the place where liquor is kept or manufac-
tured may be declared a nuisance and closed; that it may designate those who are to handle and dispense liquor and upon what terms; that it may forbid advertisements of liquor. * * *"

It was insisted in the above case that the act was void because it gave the right to registered pharmacists to deal in intoxicants under certain restrictions, and because those who have liquors manufactured in the state which are in bond may have possession and pay tax and dispose of such liquors outside of the state, and all others must get rid of the intoxicants which they have on hand within ten days of the time that the law goes into effect.

To this therein the court said:

"The 'privileges and immunities' section of our Constitution, the 'class' section, and the 'general law' section are not violated if an act is reasonably designed to protect the health, morals or welfare of the public. * * * The legislature must classify in nearly every act which it passes to protect society. To hold that it may not, would be to overthrow nearly all of the laws that are made for the public welfare. If the legislature thought that this law could be better enforced by compelling all persons to remove liquors from the state except those having liquors manufactured in the state and in bond, it had a perfect right to do so. It is not for this court to try to excel legislative wisdom on the question of expediency."

These principles of law were upheld and followed in the case of Frye, Excise Director, et al. v. Rosen (1934), 207 Ind. 409, 189 N. E. 375.

Regulations which apply to all liquor dealers, both wholesale and retail, are not objectionable as class legislation, for the classification is both natural and practical under the accepted theory that the position of the liquor traffic with reference to the police power is distinct from that of every other form of human endeavor or activity. 30 Am. Jur. page 280.

In the case of Phillips v. City of Mobile, 208 U. S. 472, 28 S. Ct. 370, it was said that one of the recognized and the
commonest forms of liquor control is a license tax upon dealers. This is frequently the best and most practical means of regulating the liquor business. The higher the license, it is sometimes said, the better the regulation as the effect of a high license is to keep out of the business those who are undesirable and to keep within reasonable limits the number of those who may engage in it. See also 30 Am. Jur. page 295.

"Again in 30 American Jurisprudence, page 300, it is said, "liquor license laws are for the protection of the community, and not for the benefit of liquor dealers, their object being to restrict the traffic to the few, and not to open it to all without restraint. Such laws are essentially police laws, and do not purport to be a regulation of commerce." A like holding was held in the case of Haggaret et al. v. Stehlin et al. (1893), 137 Ind. 43, 35 N. E. 997.

It has been declared that the validity of the exercise by a State of its police power in regulating the sale of spirituous liquors does not in the least degree depend on any question as to the presence or absence of discrimination for or against particular persons or classes of persons; the legislature may lawfully grant the right to sell to a certain class or classes of persons and withhold it from all others. Under this theory, no citizen of the United States may complain because state police regulations deny him the privilege of selling liquors, even where the privilege is accorded other citizens. 30 Am. Jur. 301, and cases cited.

It has been said too, that a liquor license law is restrictive, not permissive. Sopher v. State 169 Ind. 177, 81 N. E. 913. Haggart et al. v. Stehlin et al., supra.

In the case of Premier-Pabst Sales Co. v. McNutt (1935), 17 Fed. Supp. 708, the Indiana State Liquor Law prohibiting nonresident manufacturers and wholesalers of alcoholic beverages from selling their products within state except to designated resident importers was held not to create unjust discrimination between such nonresidents and residents of Indiana engaged in same business, where residents were required to pay license fees, taxes, and advertising expenses not imposed upon nonresidents and the fact that the Indiana statute provided that all alcoholic beverages imported into the state should be purchased and held by resident importers was not in violation of the commerce Clause of the Federal Con-
stitution. Therein it was stated that the State under its police powers had authority to regulate or entirely prohibit liquor traffic and the validity of the Indiana statute providing that all alcoholic beverages imported into the State should be purchased and handled by resident importers was held not affected by importers' requirement that nonresident brewers should pay each importer a fee for execution of contracts to handle their products since that was a matter of contract between them. It was likewise held that this statute was not violative of Federal equal rights statutes or equal protection clause of the Constitution.

In the case of Wagner et al. v. The Town of Garrett, 118 Ind. 114 at 118, it was held to be a reasonable regulation to require those who apply for a town license to first obtain a license from the board of commissioners, as required by the State. The underlying reason for same being that persons who obtain license from the county boards may be presumed to have shown their fitness to be trusted with the sale of intoxicating liquors, before a tribunal where the right of remonstrance is secured. Towns are not provided with the machinery for prosecuting inquirers into the character and fitness of applicants as are boards of commissioners.

In the case of City of Chicago v. Netcher, 183 Ill. 104, 55 N. E. 707, it was said: The liquor business is one peculiarly subject to the police power on account of the multitude of evil which result from it. Police regulation of that business has always been sustained, as having for its object the prevention of intemperance, pauperism, and crime, and diminishing, as far as practicable, the injurious consequences to the public resulting from the business. And in the case of Schwuchow v. City of Chicago, 68 Ill. 444, it was said:

"This business is, on principle, within the police power of the state, and restrictions which may rightfully be imposed upon it might be obnoxious as an illegal restraint of trade when applied to other pursuits."

In the case of State v. Gerhardt (1896), 145 Ind. 439 at 467, it was said: "A license to engage in the liquor traffic is not a contract or grant, but a mere permit, and the applicant
who receives it does so with the knowledge that it is at all times within the control of the legislature.

In the case of Sopher v. State, supra, it was held that the legislature has the constitutional right, as a restrictive measure, to license the traffic in intoxicating liquors for beverage purposes and the right to engage in such business is subject to any restriction the legislature sees fit to impose under its exercise of the police power. It is the duty of the courts to enforce the valid laws enacted by the legislature, regardless of whether the wisdom of such laws accords with the views of such courts and that it is not a question whether the statute provides the most effective remedy for the evils mentioned nor whether some other kind of statute would not have better accomplished the object in view. That consideration belonged exclusively to the legislature.

In the case of Cain v. Allen et al. (1906), 168 Ind. 8, it was said: Laws enacted to carry into effect such regulation or restriction (liquor laws) are passed by the legislature in the exercise of the police power of the State, and the extent to which these regulations or restraints may be carried is a matter within the sound discretion of the legislative department, except as may be restrained by some constitutional or fundamental law.

As part of the Michigan system for controlling the sale of liquor, bartenders are required to be licensed in all cities having a population of 50,000 or more, but no female may be so licensed unless she be “the wife or daughter of the male owner” of a licensed liquor establishment. The district court of three judges held the act to be valid. Goesaert et al. v. Cleary et al. (1947) 74 Fed. Supp. page 735. Their holding was sustained by the Supreme Court of the United States, 335 U. S. 464. The court said that this law was not on its face unreasonable or repugnant to the federal Constitution. That the equal protection clause of the Fourteenth Amendment does not prohibit all classification; that the equal protection clause did not take from the state the power to classify in the adoption of police laws, but admits of the exercise of wide discretion and avoids what is done only when it is without reasonable basis. That a classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it
results in some inequality. That when the classification in
such a law is called in question, if any state of facts that
reasonably can be conceived, they would sustain it, the exist-
ence of such state of facts at the time the law was enacted
must be assumed and that one who assails the classification in
such a law must carry the burden of showing that it does not
rest upon a reasonable basis, but is essentially arbitrary.
Having these principles in mind the court said: "We turn to
the Michigan Statute under consideration. It is conceivable
that the legislature was of the opinion that a grave social
problem existed because of the presence of female bartenders
in places where liquor was served in the larger cities in
Michigan. It may have been the legislatures opinion that this
problem would be mitigated to the vanishing point in those
places where there was a male licensee ultimately responsible
for the condition and the decorum maintained in his estab-
ishment. It may have determined that the self interest of a
male licensee in protecting the immediate members of their
families would generally insure a more wholesome atmosphere
in such establishments. The legislature may also have con-
sidered a likelihood that a male licensee could provide pro-
tection for his wife or daughter that would be beyond the
capacity of a woman licensee to provide for herself or daugh-
ter." The statute in question permitted women to act as
waitresses in an establishment selling liquor and did not
permit the same women to act as bartenders in the same
establishment. It was claimed that this was a discrimination
between female bartenders and female waitresses but the
court said: "that the legislature may also have reasoned that
a graver responsibility attaches to the bartender who has
control of the liquor supply than to the waitress who merely
receives prepared orders of liquor from the bartender for
service at a table. It may have determined that the presence
of female waitresses does not constitute a serious social prob-
lem where a male bartender is in charge of the premises, or
where a male licensee bears the ultimate responsibility for the
operation therein. It may reasonably be conceived that the
legislature deemed it necessary to have male control of and
responsibility for the supply of liquor in the establishment
but that it was not necessary to regulate the routine tasks of
the waitresses in bringing food and drinks to patrons at
individual tables."
In determining what may have motivated the Legislature in enacting this statute we must bear in mind that:

"A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. * * *" Carmichael v. Southern Coal & Coke Co., 301 U. S. 495 at page 510, 57 S. Ct. 868.

It should be emphasized that the court cannot be concerned with the wisdom of the legislation or its practicability.

The plaintiffs' objection that the legislature may not deny any woman the privilege of being employed as a bartender, if the right to engage in such employment is given to any group of women, is also without merit. There is no requirement that the State must extend its regulation to all cases which could be reached and improved by appropriate legislation, in order to sustain the constitutional validity of regulations for the correction of a wrong which in its experience is indicated. In Bosley v. McLaughlin, 236 U. S. 385, 35 S. Ct. 345, a California statute limited the permissible hours of work for women to eight hours a day. Graduate nurses, however, were expressly excepted from the operation of the law. The court rejected the contention that the act violated the equal protection clause of the Constitution. As Mr. Justice Brandeis wrote in Farmers & Merchants Bank of Monroe, North Carolina et al. v. Federal Reserve Bank of Richmond, Virginia, 262 U. S. 649 at page 661, 43 S. Ct. 651 at page 656:

"It is well settled that the Legislature of a state may (in the absence of other controlling provisions) direct its police regulations against what it deems an existing evil, without covering the whole field of possible abuses."

As to the scope, reasonableness, or wisdom of the regulations imposed by the legislature under the police power, we
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note the apt language used by Judge Meyers in the case of Pittsburgh, etc. R. Co. v. State (1913), 180 Ind. 245 at 250:

"* * * The police power is of very wide scope, and the extent to which it may go, has not, and cannot be defined, and its application in a proper case is not inimical to the Federal Constitution, but it must also be recognized that property, or property rights may not be destroyed, under the guise of the police power, or a so-called police regulation, unless it appears that it has, or can have no just relation to the protection of the public health, welfare, morals or safety. Unless this negation affirmatively appears by the act, or its history in enactment, the police power extends even to the taking and destruction of property, without being an infringement upon the due process of law clauses of either Constitution, even though compliance with the specific act shall require a large expenditure of money, and it will be presumed that the act is reasonable, unless the contrary appears from facts of which the courts will take notice. (Cases cited).

"Regulation is the normal form of operation of the police power, and it operates on the relation which the property or rights affected, bear to the danger or evil which is to be provided against. The courts can have nothing to do with the wisdom, or expediency of legislative measures, or cost of compliance with them, as a rule; but if the legislature is the sole judge of the necessity of the measure it enacts, there can be no limitation on the so-called police power, and it is everywhere regarded under constitutional government, that a measure must not be unreasonable, and it is necessarily of the very essence of constitutional government and coordinated power. Freund, Police Power §§ 8, 15, 16, 17, 18, 20, 21; Tiedeman, Lim. of Police Power §§ 1, 4, 144. It may be a matter of degree, but it must not be unreasonable, for it is apparent that a measure may be unreasonable, from an excess of degree, and the question ordinarily is, whether the regulation becomes prohibitive, destructive, or confiscatory, or reasonably adapted to promote some public purpose, or some purpose in which the public is interested, or in which the
lives, health, or safety of classes of the public are directly interested, or affects others indirectly, as for example, in respect to safety appliances. (Cases cited.)

“Courts will not attempt fine distinctions with respect to the matter of reasonableness, or unreasonable of a statute, and ordinarily it must be plain that no circumstances could justify an act before courts are authorized to interpose. State v. Barrett, supra. As here presented, this court is confronted squarely with the proposition whether it is conclusively bound by the presumption that there were reasons presented to the legislature as the basis for the act; as to which the court cannot be informed, as presented by the act itself, or whether evidence here adduced is admissible as tending to show that the act is arbitrary and unreasonable. The effect of such evidence is of course a collateral attack upon the legislative inquiry, judgment and declaration, that is, to impeach it, and we fully appreciate the gravity of the question. On the one hand we have the legislative determination, on the other the impeachment of that determination by the opinion of witnesses, which if admissible would seem to cover every phase of the case, as presenting an unreasonable and arbitrary exercise of legislative authority. What the evidence might be in another case under the same act, as showing good cause for the enactment, only demonstrates the inadmissibility of this evidence for any purpose. It would be a dangerous rule to declare that the validity or invalidity of an act of the legislature can be the subject of collateral attack as to the facts upon which the legislature has acted; that is, that a jury may determine from evidence adduced before it, or from lack of evidence, that an act is, or is not invalid, with as many varying conclusions as there might be bodies of triers, or upon such facts as ingenuity might suggest as matters of opinion, or actual facts in evidence. The question of the validity of a legislative act is necessarily one of law, and not of fact, and is not the subject of inquiry by triers of fact, and cannot be made to depend upon the testimony of witnesses, where the question is one within the compe-
tency of the legislature to enact, that is within its power, and its validity cannot be contested or brought into review by inquiries of fact into extraneous matters, of which courts may not take judicial notice. (Cases cited). If it cannot be made to appear that a law is in conflict with the Constitution, by argument deduced from the language of the law itself, or from matters of which a court can take judicial notice, then the act must stand. The testimony of expert, or other witnesses, is not admissible to show that in carrying out a law enacted by the legislature some provisions of the Constitution may possibly be violated. (Cases cited).

"* * *

"At least the court cannot say that it is unreasonable, but is bound to presume that there were facts before the legislature which would show it not to be unreasonable, and we hold that it cannot be the subject of attack, by oral evidence, as unreasonable, and arbitrary, and confiscatory, as is sought in this case.

"We do not place this conclusion on any ground of abstract justice, or judicial notions of natural right, or equity, but upon the ground that the act cannot be attacked by oral evidence as to its unreasonableness, or the cost, or expense, or the hardship which may result from compliance, for the reason that the question is one of power in the legislature as a police regulation, with which courts may not interfere, unless they can say that it is not within the power, or that they judicially know that there could be no reason, or reasons for the act."

B.

Rules of Statutory Construction.

In addition to these salutary principles there are certain rules of statutory construction that I believe are applicable and must be kept in mind before proceeding to consider the problem herein.
In construing a statute, the first rule is to determine and give effect to the legislative intent.

W. H. Dreves, Inc. v. Oslo School (1940), 217 Ind. 388, 28 N. E. (2d) 252;

In arriving at the meaning of a statute, it must be considered as an entirety, each part being considered with reference to all other parts.

Walgreen Co. v. Gross Income Tax Division (1947), 225 Ind. 418 75 N. E. (2d) 784;
Dowd v. Johnson (1943), 221 Ind. 398, 47 N. E. (2d) 976;
County Dept. of Public Welfare v. Patthoff (1942), 220 Ind. 574, 44 N. E. (2d) 494;
Zoercher v. Indiana Associated Tel. Corp. (1937), 211 Ind. 447, 7 N. E. (2d) 282;
Indianapolis Railways Inc. v. Boyd (1944), 222 Ind. 481, 53 N. E. (2d) 762;
Long v. Stemm (1937), 212 Ind. 204, 7 N. E. (2d) 188.

It is presumed that the legislature does not intend an absurdity, and such a result will be avoided if the terms of the act admit of it by a reasonable construction and by an "absurdity" is meant anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been the intention of men of ordinary intelligence and discretion.

Marks v. State (1942), 220 Ind. 9, 40 N. E. (2d) 108.

The purpose of the act is expressed in the Statute by Section 12-301, Burns 1942 Replacement (Acts 1935, Ch. 226, sec. 1, p. 1056) which provides as follows:

"This act shall be deemed an exercise of the police powers of the state, for the protection of the economic welfare, health, peace and morals of the people of the state, and to prohibit forever the open saloon; and it is hereby declared that all the provisions of this act
and the classifications and differentiations herein made and/or authorized to be made, are actually and substantially related to the accomplishment of the object of this act and necessary to effectuate its purpose; and it is declared that alcohol and all beverages containing alcohol shall be subject to the provisions of this act; and all of the provisions of this act shall be liberally construed for the accomplishment of this purpose.”

And it has been held that “all regulations and taxes provided for by the Liquor Control Act of 1935 are imposed under and by virtue of the police power of the State.

Department of Treasury v. Midwest Liquor Dealer Inc. (1943), 113 Ind. App 569, 48 N. E. (2d) 711.

Section 12-302, Burns 1942 Replacement (Acts 1935, Ch. 226, Section 2, page 1056), provides as follows:

“No person shall for commercial purposes manufacture for sale, bottle, sell, barter, import, transport, deliver, furnish or possess, any alcohol or alcoholic beverages, malt, malt syrup, malt extract, liquid malt or wort, except as authorized in this act, and all of the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be limited and temperance encouraged: Provided, That any manufacturing, bottling, selling, bartering, transporting, delivering, furnishing, or possessing elsewhere than in one’s own home any alcohol or alcoholic beverage shall be deemed presumptively for commercial purposes.”

Section 12-427, Burns 1942 Replacement, (Acts 1939, Ch. 30, Section 9, page 79), reads as follows:

“No authority or power conferred heretofore or by this act on the excise administrator or the alcoholic beverage commission shall be construed to authorize the said excise administrator or the commission by regulation or otherwise to alter, amend, add to, enlarge or restrict the provisions of this act. Wherever, it is pro-
vided that any power or authority conferred upon the excise administrator or the commission shall or may be exercised in his or its discretion, such authority or power shall not be construed to permit said excise administrator or the commission to exercise his or its discretion in an arbitrary or unreasonable manner."

These quoted sections of the statute clearly indicate that the Indiana Liquor Law is restrictive and not permissive. Likewise that the declared intent of the Legislature is that all the provisions of the Liquor Act, all the classifications and differentiations made or authorized are actually and substantially related to the accomplishment and object of the act and in the declared opinion of the legislature are necessary to effectuate its purpose and that one can possess or deal in any alcohol or alcoholic beverages only as authorized in the act. In brief—that which is not authorized is prohibited.

C.

Construction and Meaning of Statute.

Keeping in mind the herein mentioned salutary rules pertaining to police powers and statutory rules of interpretation, I will proceed to consider the questions presented. First you ask:

"Can a person who applies for a Beer Wholesaler permit, who does not sell beer at wholesale, but only holds such permit so as to obtain a Wine Wholesaler permit, qualify to hold a Wine Wholesaler permit? In other words, does he have to actually engage in the wholesale beer business?"

Section 12-521, Burns Indiana Statutes, provides insofar as is pertinent to the question presented:

"* * * Said wine wholesaler’s permit shall be issuable only to a permittee holding a beer wholesaler’s permit to sell at wholesale alcoholic malt beverages and/or a wholesaler holding a permit to sell at wholesale alcoholic spirituous beverages."
"The said license fee mentioned herein shall be additional to any license fee required for the issue of any other permit. The holder of a wine wholesaler's permit shall have the exclusive right to import and/or transport alcoholic vinous beverages from any other state or country into the state of Indiana and to bottle or place the same in different containers from that in which such alcoholic vinous beverages were imported into the state of Indiana and to sell, furnish, and/or deliver the same to persons holding a dealer's wine permit or a retailer's vinous permit but not at retail. All transportation thereof shall be in such barrels, or casks, or bottles or containers as are permissible under the rules and regulations of the commission and which the commission may require to be stamped, labeled, marked, and/or designated, or bear or display any other identification, label or device.

"Said wine wholesaler's permit shall also authorize the holder to sell and deliver alcoholic vinous beverages to a customer at his residence in any quantity at any one time not exceeding fifty (50) gallons in bottles or other permissible containers."

(The license fee provided by this Section of the Statute for a wine permit is $500.00.)

In the case of Department of Treasury v. Midwest Liquor Dealers, supra, it was held that the license and stamp tax involved in the Liquor Law was not for the purpose of raising revenue but for the purpose of regulation and the Supreme Court of the United States in the case of Phillips v. City of Mobile, supra, said that one of the recognized and commonest forms of liquor control is a license tax upon the dealer. That this is frequently the best and most practical means of regulating the business. That the effect of a high license is to keep out of the business those who are undesirable and to keep within reasonable limits the number of those who may engage in it. If such be the purpose of the license then it can be seen that to require a beer wholesaler's license or alcoholic spirituous license as a prerequisite of getting a wine wholesaler's license was not for the purpose of raising revenue but to better the regulation and control the flow of the wine. If the intent
of the legislature had been simply to raise revenue, the simple and most feasible thing to have done would have been to have charged more for the wine permit.

It may be argued that it was the intent of the legislature when they provided as they did in this Act that wine wholesaler’s permit shall be issuable only to a permittee holding a beer wholesaler’s permit to sell at wholesale alcoholic malt beverages and/or a wholesaler holding a permit to sell at wholesale alcoholic spirituous beverages was that the wholesale wine permittee have and possess the same qualifications as are required in the Act to be possessed by beer (12-512, Burns) or liquor wholesaler (12-515, Burns).

Burns Section 12-512 (Acts of 1935, Chapter 226), provides that an applicant for a wholesale beer permit shall have available for investment, capital in cash or property necessary and useful in his business exclusively as a wholesaler, of at least $3500.00 exclusive of motor vehicles, and if his application be granted, such investment shall actually be made and proof thereof, submitted to the Commission before such applicant shall engage in business as a wholesaler under his permit.

Why this requirement if it was the intent of the legislature that a wine wholesaler permittee could be permitted to be engaged in the business of only selling wine? Why require one to show proof of available cash to be used in the wholesale beer business in order to get a wine wholesale permit if it was the intent of the legislature that a wine permittee need not necessarily be in the beer business?

This section of the statute further requires one seeking a wholesale permit to file a bond in the sum of $3,000.00 conditioned that he will not violate any of the provisions of any law of the State touching the business carried on by such wholesaler and that he will not violate any of the rules and regulations of the Commission. As for the liquor wholesaler’s permit the statute provides for a licensee fee in the sum of $2,000.00 in cash and the filing of a bond in the sum of $10,000.00. (Burns Section 12-515). These sections of the statute further require the applicant for a permit to show by affidavit that he possess certain declared qualifications—reputation for morality and business integrity, bona-fide residence for a definite number of years and that he has not been con-
vic ted within a definite number of years of a felony. Section 12-522, which pertains to the issuing of a wholesaler's wine permit requires payment of $500.00 for a license and the filing of a bond in the sum of $500.00, but nowhere in the Act is it required that he furnish any proof as to residence, fitness, reputation for morality or business integrity.

The Acts of 1945, Chapter 357, Section 10, page 1737; Acts 1947, Chapter 148, Section 2, page 454, same being Burns Section 12-442, 1949 Pocket Supplement, provides some slightly different qualifications than set out in the 1935 Act and it is to be noted that these qualifications are to be possessed also by those applying or receiving a wine wholesaler's permit. This in itself I submit is in support of my hereinafter conclusions as well as to weaken any argument to the contrary.

I can conceive of no reason on the part of the legislature in enacting the Liquor Act of 1935 to require certain rigid qualifications as to fitness on the part of one applying for a wholesale beer or a wholesale liquor permit and none for one applying for a wholesale wine permit. To say that the requirement that one first receives a beer or liquor permit before obtaining a wine permit was for the sole purpose of showing that the wine permittee possessed qualifications of fitness has no force or merit. Again, what conceivable reason had the legislature in requiring those desiring to go into the wholesale beer or wholesale liquor business to show their qualification as to fitness by the mere filing of an affidavit in proof of same; and for those desiring to go into the business of only wholesaling wine to show or produce evidence of their fitness by taking out another license at the cost of $1,000.00, in case it be a beer permit or $2,000.00 in case it should be a liquor permit. Why the penalty? Why grant the discretion or choice of permit to the applicant if the intent of the legislature was that one could go into the wholesale wine business and only sell wine. It is difficult, if not impossible, to see why one if he desired to go into the business of wholesale wine only would take out the more expensive permit. It is but natural that he would take out the permit that cost the least.

The method chosen by the legislature, as I see it, was to keep out of the business those who are undesirable, and to keep within reasonable limits the number of those who may
engage in the wholesaling of wine. The purpose was restrictive. Perhaps the legislature deemed it wise to more effectively carry out the purpose of the Act that the wholesaler dealing in wine be confined and maintained only under “two roofs” —beer wholesale establishment or liquor wholesale establishment.

In my opinion the legislature had in mind these rigid requirements on the part of beer and liquor wholesalers and that they (wholesalers) were familiar with the laws and regulations pertaining to the business and no doubt believed because of their already substantial investment, those in the wholesale beer or liquor business would be more apt to follow the laws and regulations pertaining to the business and that those men in the actual business of wholesaling beer or liquor would be more qualified and fitted to handle the wholesale wine business and that the keeping of this business under “two roofs” would keep out of the business those who are undesirable and to keep within reasonable limits the number of those who may engage in it.

All or any one of these reasons are sufficient to answer any charge against the reasonableness of such legislation. As pointed out herein, Pittsburgh, etc. R. Co. v. State (1913), 180 Ind. 245, supra, the unreasonableness must appear in its face. It is my expressed opinion that “unreasonableness” does not appear on its face.

It is therefore my opinion that the intention of the legislature and that the wording of the Act itself only authorizes the issuance of a wholesale wine permit to those actually lawfully engaged in the wholesale beer or liquor business. A construction which would lead to an absurd result should not be adopted, if the statute will bear a construction by which that may be avoided. Absurdity, the Supreme Court has said means anything which is so irrational, unnatural or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion. Adopting the rule of rationality and ordinary intelligence and discretion, I cannot ascribe to the legislature any other intention than that which I have mentioned and expressed herein.

Your second question is:

“Can such a Wine Wholesaler sell wine to a Beer Wholesaler or to a Liquor Wholesaler?”
Sections 12-301 and 12-302, specifically provide that one shall not deal in alcoholic beverages except as authorized by the Act. The only authority granted to a wine wholesaler permittee (Burns, Section 12-521) is as follows:

"** The holder of a wine wholesaler’s permit shall have the exclusive right to import and/or transport alcoholic vinous beverages from any other state or country into the state of Indiana and to bottle or place the same in different containers from that in which such alcoholic vinous beverages were imported into the state of Indiana and to sell, furnish, and/or deliver the same to persons holding a dealer’s wine permit or a retailer’s winous permit but not at retail. All transportation thereof shall be in such barrels, or casks, or bottles or containers as are permissible under the rules and regulations of the commission and which the commission may require to be stamped, labeled, marked, and/or designated, or beer or display any other identification, label or device.

"Said wine wholesaler’s permit shall also authorize the holder to sell and deliver alcoholic vinous beverages to a customer at his residence in any quantity at any one time not exceeding fifty (50) gallons in bottles or other permissible containers."

The only authority granted to the wine wholesaler permittee insofar as sale is concerned is to sell at wholesale to a person holding a dealer’s wine permit or a retailer’s winous permit and the authority to sell to a customer at his residence in any quantity at one time not to exceed fifty gallons. The terms “dealer’s wine permit” and “retailer’s winous permit” are defined by statute. For this opinion it is sufficient to say that they pertain to the selling of wine by retail and not by wholesale. No authority is granted by the Act to a wine wholesaler permittee to sell wine to a beer wholesaler or to a liquor wholesaler. No such right or authority is granted in the Act to a beer wholesaler; however, section 12-516, specifically authorizes a liquor wholesaler to purchase alcoholic spirituous beverages from other liquor wholesale permittees as well as to sell to other wholesale permittees. It is apparent therefor that the legislature in enacting this Act had this point in mind and
it is to be presumed that advisedly they did not give this right to the wine or the beer wholesale permittee. It is therefore my opinion that a wine wholesaler cannot sell wine to a beer wholesaler or a liquor wholesaler.

Your third question is:

"Can a Wine Wholesaler, bottle wine for a winery or another Wine Wholesaler, the wine being furnished by such other person or persons to be bottled with their own private label?"

The Act authorizes the wholesale permittee to bottle alcoholic vinous beverages or place the same in different containers from that which such vinous beverages were imported into the State of Indiana and that is the limit of his authority insofar as bottling is concerned. Finding no authority in the Act for such right it is my opinion that a wine wholesaler cannot bottle wine for a winery or another wine wholesaler, the wine being furnished by such other person or persons to be bottled with their own private label.

Your fourth question is:

"Can a Wine Wholesaler sell and ship wine outside of the state of Indiana?"

Attorney General's Official Opinion No. 66 for 1949 held that one possessing a wholesaler's beer permit was, under Burns Section 12-508 and 12-801, authorized to sell outside the State; that no such authority was granted in the Act to one possessing a liquor wholesale permit. I find no such authority granted in this Act to one possessing a wine wholesale permit. In Official Opinion No. 66, attention was called to Section 12-919a, Acts of 1939, Chapter 30, Section 6, page 79, which provides:

"Notwithstanding any other provision in this act the commission may authorize the sale of alcoholic beverages to any officer or person legally entitled to purchase the same, and the delivery to such person on a military reservation or other reservation within this state which is under the authority of the United States government or any department thereof, if such sale and delivery is
authorized by said government or department thereof having control of said reservations."

In this opinion this section was construed to mean "that the Commission may within its discretion authorize the sale and delivery to an officer or person on a military reservation or other reservation within the State which is under the authority of the United States government or any department thereof, provided that same is legally authorized by said government or department thereof having control of said reservation." In my opinion this same privilege is granted to a wine wholesaler. Aside from that it is my express opinion that a wine wholesaler cannot sell and ship wine outside of the State of Indiana.

OFFICIAL OPINION NO. 44
August 10, 1950.

Honorable Thomas R. Hutson,
Division of Labor,
225 State Capitol Building,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 19, 1950, which reads as follows:

"There are in operation in the northern part of the state, numerous high pressure boilers used in distilling of mint. These boilers are located on the farms and are used in connection with the products of farming. The boilers operate at relatively high pressure, approximately 100 P. S. I. The Indiana Law, Section 4d exempts boilers used wholly for agriculture from inspection by the state department.

"Our problem is this, would these boilers be classed as agriculture boilers where the products are sold for commercial use and used in processing various products that are for mint flavors?"

"An official opinion from your office would be of utmost important to me in making inspections relative