It is my further opinion that in a situation where a clerk of a circuit court, acting as the ex officio registration clerk, has failed to perform any duty imposed upon him by the election laws of the state of Indiana the State Election Board has the duty and statutory obligation to exercise its power of supervision in compelling such registration clerk to comply with the provisions of the election laws of the state of Indiana.

OFFICIAL OPINION NO. 63

October 5, 1950.

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

Dear Sir:

This is in reply to your request for an interpretation of the Acts of 1939, Chapter 30, Section 8, page 79, as amended by the Acts of 1941, Chapter 237, Section 6, page 957, same being Section 12-530 Burns 1942 Replacement. Your specific question being whether or not one who has a permit to sell alcoholic spirituous beverages at wholesale may sell alcoholic vinous beverages on credit. The section of the statute insofar as pertains to the problems in question reads as follows:

"After July 1, 1939, it shall be unlawful for any permittee, his agent, servant or employee, to sell, or offer to sell, or purchase or receive, any alcoholic beverages except for cash.

"* * *

"Provided, however, nothing in this section shall be deemed to apply to any manufacturer licensed to manufacture alcoholic spirituous beverages, nor to prohibit any licensee or permittee authorized to sell alcoholic spirituous beverages at wholesale from extending
credit on such beverages sold to licensees or permittees authorized to purchase the same, for a period of fifteen (15) days from the date of invoice, date of invoice included, and further than (that) when such fifteen (15)-day period without payment in full has passed then no wholesaler shall sell any such retailer except for cash on delivery."

Section 12-303 Burns, defines various terms used in the Intoxicating Liquor Act. Sub-section (a) states:

"(a) The words ‘alcoholic beverages,’ whenever used in this act, shall be construed to mean all malt, vinous or spirituous beverages containing alcohol, and every other drink, mixture or preparation having any alcoholic content, whether patented or not, reasonably likely, or intended to be used as a beverage, including ethyl alcohol.

"* * *

“(e) ‘Alcoholic beverage’ shall mean and include ethyl alcohol, spirits, liquor, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by human beings.

"* * *

“(o) ‘Alcoholic spirituous beverages’ shall be construed to mean any beverage containing alcohol obtained by distillation mixed with drinkable water and other substances in solution and including among other things, brandy, rum, whiskey, and gin, but not including wines containing less than twenty-one (21) per cent of alcohol reckoned by volume: And, provided further, That it does not include industrial alcohol."

As a general rule, a proviso in a statute is intended to except something from the enacting part of the statute, or to waive or restrain its generality, and, on construction, to be strictly limited to the objects fairly within its terms.

State ex rel. v. Hart (1914), 181 Ind. 592, 105 N. E. 149.
It is the office and function of a proviso contained in a statute to limit and qualify the preceding language of the statute and not to enlarge the effect of a statute.


You state in your letter that some permittees insist that the relative phrase "such beverages" should be referred to the first paragraph of the Section of the statute herein involved. It is my opinion that such an interpretation would not only be not according to legal and strict grammatical construction but would impair the meaning of the proviso clause.

"Such" as used in statutes is a descriptive and relative word, and refers to the last antecedent, unless the meaning of the sentence would thereby be impaired.

Words and Phrases, Volume 40, p. 562;
Summerman v. Knowles, 33 N. J. Law 202, 205;

As pointed out herein, the office of a proviso in a statute generally is to except something from the enacting clause or to qualify or to restrain its generality. Therefore it is my opinion that the necessary effect of the proviso clause is to legally permit those authorized to manufacture and those authorized to sell "alcoholic spirituous" beverages at wholesale to sell same on credit. In other words the Act requires that all alcoholic beverages be sold for cash except alcoholic spirituous beverages sold by duly authorized manufacturers or by duly authorized wholesalers of same.

It is my expressed opinion therefore that a permittee authorized to sell "alcoholic spirituous beverages" at wholesale is not authorized to sell alcoholic vinuous beverages on credit. It must be a cash sale.