

would not be subject to taxation under the personal property tax laws of this state in the absence of congressional consent. *Surplus Trading Co. v. Cook*, 281 U. S. 647. If the cession was not exclusive, but partial only, the jurisdiction of the state would be determined by the valid terms and reservations of the cession. *Superior Bath Co. v. McCarroll*, 312 U. S. 176. Where the United States government has not accepted jurisdiction as provided in the Act above quoted, it is presumed that no such jurisdiction has been ceded and accepted. *Adams, et al. v. U. S., et al., supra.*

For a further discussion of the question and the citation of other authorities, we refer you to the opinion of the Attorney General, dated October 30, 1943, O. A. G. 1943, page 609. No question of partial cession and acceptance of jurisdiction is here involved. Under the foregoing statute and authorities, the question is whether the statutory steps have been taken to effect cession of exclusive jurisdiction to the United States. An examination of the records in the office of the Governor fails to disclose any record showing compliance with the above statutes with respect to the lands mentioned in your letter. I, therefore, assume that the United States government or its proper agency has not given the notice required by the federal statute above referred to. Therefore, the federal government has not accepted or acquired jurisdiction over the premises in question, and individuals or employees living in the government owned houses within the area referred to are subject to personal property tax.

OFFICIAL OPINION NO. 13

March 14, 1945.

Hon. Thurman B. Rice, M. D.,
Acting Secretary, Indiana State Board of Health,
1098 West Michigan Street,
Indianapolis 7, Indiana.

Dear Dr. Rice:

I have your letter of January 26, 1945, which reads as follows:

“The official opinion of the State Attorney General is requested on the questions listed below on Chapter

71 of the Acts of 1911, known as the Cold Storage Warehouse Law.

"1. Is the license issued to the cold storage plant or to the individual operating the plant, and if to the plant, is the license transferable?

"2. Shall a license be issued on an annual or calendar year basis? If on an annual basis, is it within the authority of the board to promulgate regulations to place it on a calendar year basis? Section 8 states that the board may make reasonable rules and regulations necessary or expedient to carry out the provisions of the act. It would definitely save considerable time and money by placing it on a calendar year basis.

"3. May refunds of unexpired license fees be made in the event the cold storage plant is discontinued?

"4. In the event the plant changes ownership, may the unexpired license fee of the former owner be credited to the new owner?

"5. Should the license be dated and fees charged beginning as of the date the license is issued, the date the plant is inspected, or the date the plant started operating?"

1. In answer to your first question I wish to advise that Section 7, Chapter 71, Acts of 1911, same being Section 35-1506 Burns' 1933, provides as follows:

"Any person, firm or corporation desiring to carry on, engage in or conduct a business of storing perishable food, or to keep, maintain or operate a cold storage or refrigerating warehouse where meats, fish, eggs, butter, cheese, poultry, game, fruits, farm or garden produce, or any other perishable food stuffs are stored, shall make application in writing to the state board of health for that purpose, in which application shall be declared the location at which said business is proposed to be carried on. Upon receipt of the application, the state board of health shall cause an examination to be made into the sanitary condition of the place of business occupied by the applicant. If, upon examination, said place of business is found to be in a sanitary condition, clean and suitable for

said purpose, *the state board of health shall cause a license to be issued such applicant*, authorizing such applicant to carry on said business for and during the period of one (1) year. The said license shall be issued upon payment by such applicant of a license fee of ten dollars (\$10.00) to the treasurer of state. The license fees so paid shall be held by the treasurer of state as a fund for the enforcement of this act and, at the end of each fiscal year, the unexpended balance shall revert to the general fund. All disbursements necessary for the carrying out of this act shall be paid by warrant drawn upon the treasurer of state after the filing with the auditor of state all vouchers and bills as now provided for by law. In the event that said place of business shall be conducted in an insanitary manner or in a manner contrary to the provisions of this act, it shall be the duty of the state board of health to revoke said license and to close the cold storage or refrigerating warehouse until such time as it may again be in a sanitary condition, clean and suitable for use."

In 37 C. J., Page 245, Section 107, the following language is found:

"Unless a transfer is permitted by the license statute or ordinance, a license is generally regarded as a special privilege of personal trust and confidence which cannot be assigned or transferred without the consent of the licensing authorities, * * *." (Citing cases.)

I am therefore of the opinion that under the above quoted section of said statute such a license is a personal license, issued to the individual and not to the plant, and is not transferable.

2. In answer to your second question it is my opinion that from the clear provisions of Section 7, Chapter 71, Acts of 1911, same being Section 35-1506 Burns' 1933, *supra*, the examination of the premises is first made and then the license issued which is for a period of one year. This makes the license renewable on an annual rather than a calendar year basis.

3. In answer to your question number three (3) it is to be noted Section 7, Chapter 71, Acts of 1911, same being Section 35-1506 Burns' 1933, *supra*, further provides in substance that the license fees so paid are to be held by the Treasurer of State in a fund for the enforcement of the Act and at the end of each fiscal year the unexpended balance shall revert to the general fund. It also provides that all disbursements necessary for the carrying out of the Act be paid by warrant drawn upon the Treasurer of State after the filing of all vouchers therefor with the Auditor of State.

From a consideration of the above referred to section of the statute it is clear that no refunds or license fees are specifically authorized and that said fees when so paid become part of the state treasury. Therefore no refunds on unexpired license fees could be made under Chapter 71 of the Acts of 1911. On this question see 1938 O. A. G. 131, 133, 134 and 1936 O. A. G. 222, holding unexpired license fees may not be refunded unless specific authority for the same is contained in the statute.

4. Your question number four (4) has already been answered by the answers given to questions number one (1) and three (3), *supra*. If said license is not subject to transfer, and if said unexpired license fees are not subject to refund, the unexpired license fee of the former owner of the plant could not be credited to the new owner.

5. In answer to your question number five (5) it is submitted that under the quoted part of Section 7, Chapter 71, Acts of 1911, same being Section 35-1506 Burns' 1933, *supra*, it is provided the license shall be issued upon the payment of a fee prescribed and the completion of the inspection by the State Board of Health. This section of the statute contemplates the payment of the license fee after the inspection. I am therefore of the opinion the inspection of the premises and the payment of the license fee are a condition precedent to the issuance of the license, and that the license should be dated as of the date such license is in fact issued.