ALCOHOLIC BEVERAGE COMMISSION: Construction of 1943 Act granting refunds on account of fees collected for liquor permits.

April 3, 1943.

Hon. John F. Noonan, Secretary,
Alcoholic Beverage Commission,
Illinois Building,
Indianapolis, Indiana.

Dear Sir:

I have your request for an opinion as to whether House Bill No. 309 is retroactively effective as to cases occurring prior to March 10, 1943, the date the Bill became law. The law provides for pro rata refunds on liquor sales permits in the event the holder enters the armed forces. Some permits were surrendered prior to March 10, 1943, and the question under consideration is how much refund is allowable.

The body of the Act is contained in Section 1 which reads as follows:

"Section 1. Be it enacted by the General Assembly of the State of Indiana, That any person or persons holding a permit or permits for the sale of alcoholic beverages issued by the Alcoholic beverage commission of the State of Indiana who enlists or is inducted into the armed forces of the United States for the duration of the war, may have refunded to him the proportionate part of said fee or fees for the unexpired time of such permit or permits upon verified application being made therefor and the surrender of such permit or permits to the alcoholic beverage commission. Such alcoholic beverage commission shall cause to be paid to such applicant from the excise funds, the proportionate part of the permit fee paid by such applicant, for the unexpired time of such permit or permits so surrendered."

Two principles of statutory construction are applicable to this problem. One of these principles is concisely stated in the case of Hopkins v. Jones, 22 Ind. 310 (1864), wherein the court said:
"It is a maxim of the law that statutes must be construed prospectively, unless they plainly import a different intention on the part of the legislature."

The other principle was equally well stated by Judge Hackney in the case of Board of Commissioners of Vigo County v. Davis, 136 Ind. 503 (1893):

"Rules of construction applicable to legislation, in which the public at large are interested, require liberality, while, with reference to legislation granting powers or privileges to individuals, for their own advantage, require strict construction as against the individuals."

In this case we are presented with a statute which grants privileges to certain individuals. Therefore, no matter how worthy the cause, the statute must be construed literally. By established case law the courts are prohibited from enlarging the privileges granted by a benevolent legislature. Since the statute does not plainly import a different legislative intent, it must be construed prospectively from March 10, 1943, the date of approval.

It is therefore my opinion those who have surrendered their permits are entitled to a pro rata refund of the fee for the unexpired period of the permit subsequent to March 10, 1943. Any other construction would be in violation of well established legal principles.

STATE BOARD OF TAX COMMISSIONERS: Inheritance Tax, liability of personal representative in case of transfers in contemplation of death.

April 5, 1943.

Mr. Isaac Kane Parks,
Inheritance Tax Administrator,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of March 24 in which you state that a resident of Indiana died intestate, leaving one heir at law;