Chapter 192, Acts 1921, Burns’ Revised Statutes 1933, Sec. 41-303, relating to the establishment, maintenance and operation of city, town and township libraries is sufficiently broad to authorize the things here sought to be accomplished. Among other things it is therein provided in substance that if the township advisory board of the township shall levy and collect for library purposes .5 of a mill on each dollar of all the taxable property assessed for taxation in said township, exclusive of the property of such city or town lying therein already taxed for said library, and pay over the same to the treasurer of said city or town, then the township trustee shall be a member of said board together with other members whose appointments are provided for. This contemplates a joint operation by city or town and the township—in short, a town and township library. Just what has been done here in the way of organization of this library is conjectural. My opinion is that if steps were taken in conformity with the provisions of the Act cited, then the township library has been legally established and, presumably, so maintained. The will of the testator does not prevent or interfere with the right of the township trustee so to organize and maintain the library for the reason that the will of the testator is thereby given effect even if the language therein relating to control and operation is construed as mandatory. The organization so established or to be established carries out the wishes of the testator in this respect.

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ALCOHOLIC BEVERAGES COMMISSION: Whether wholesalers may have unstamped liquor in their possession.

April 16, 1941.

Mr. Hugh A. Barnhart,
Excise Administrator,
Alcoholic Beverages Division,
225 State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion construing the provisions of Section 12-802 of Burns’ Indiana Statutes Annotated 1935, Pocket Supplement of December, 1940, insofar as the same bears upon the question as to whether
the stamps evidencing the payment of the excise tax on alcoholic spirituous beverages should be affixed and cancelled at the time such beverages are brought from a distillery or from a government bonded warehouse to an Indiana wholesaler's premises, or whether such stamps need be affixed and cancelled only prior to the sale of such beverages by a wholesaler.

The provision of the statute to which you especially refer, insofar as the same applies to the present question, reads as follows:

"An excise tax on the sale or gift, and/or the withdrawal for sale or gift of wine tonics and/or alcoholic spirituous beverages, including wines, containing more than twenty-one (21) per centum of absolute alcohol (reckoned by volume and not by weight), but beverages not containing more than fifteen (15) per centum of absolute alcohol reckoned by volume, mixed with carbonated water and/or other sanitary and potable ingredients by the manufacturer and/or bottler thereof, and sold in container filled by such manufacturer or bottler, and which are suitable for immediate consumption direct from the original container, shall be subject to the rate of tax and/or license fee hereinafter imposed on alcoholic vinous beverages) is hereby levied and imposed at the rate of one dollar ($1.00) on each gallon, twenty-five cents (25¢) on each quart or on each one-fourth (¼) of a gallon, twenty cents (20¢) on each one-fifth (⅕) of a gallon, twelve and one-half cents (12½¢) on each pint, one-eighth (⅛) of a wine gallon) and six and one-fourth cents (6¼¢) on each one-half (½) pint or fractional part of such one-half (½) pint against any permittee holding any distiller's permit, or a rectifier's permit, or a liquor wholesaler's permit or a dining-car liquor permit or a winery permit, or a wine wholesaler's permit, or a dining-car wine permit, or a boat wine permit, authorized to be issued under the terms of this act, whether such sale or gift, or withdrawal for sale or gift, be to a person authorized or not authorized to purchase or receive the same, but the same articles shall only be taxed once. Such excise tax shall be paid by the purchase of stamps from the excise administrator and by affixing the same to the immediate container of the alcoholic spirituous beverage therein contained, and duly cancelling the same."
The excise administrator is hereby granted sole authority to issue said stamps and to determine the denominations in which such stamps shall be issued, and wherever any stamp is required to be used in this act it shall mean a stamp issued by said administrator. The administrator shall prescribe the manner in which said stamps shall be affixed and cancelled. Such stamps shall be cancelled by the permittee at the time of the withdrawal of said beverages for sale or gift. No permittee mentioned in this paragraph shall sell or give or withdraw any such beverages for sale or gift, nor shall any person accept or receive any alcoholic spirituous beverages from such permittee or from any other person, if the container thereof shall not have affixed thereto duly cancelled stamps of the proper denominations, in the manner required as aforesaid."

Other relevant provisions are contained in Sections 12-805 and 12-806 of the Pocket Supplement of December, 1940, of Burns’ Indiana Statutes Annotated, 1933. Section 12-805 provides as follows:

“It shall be unlawful for any person, dealer, retailer, wholesaler, manufacturer, or any other persons, holding or not holding a permit, to sell, offer for sale, display for sale, barter, exchange, or give away any alcoholic beverage, or any container thereof, in this state, with respect to which sale, gift or withdrawal of the same for sale or gift, any tax, or license fee is herein imposed, without the tax and/or license fee applicable thereto having first been paid, unless such person is a permittee, entitled to have or possess at the time such alcoholic beverages, without the payment of said tax and/or license fee.”

Section 12-806 provides as follows:

“"The presence on the premises of and/or the possession by any person who is or who is not a permittee, of any of the beverages and/or articles and/or liquids described in this section (Sections 12-801—12-815), and not exempt from the taxes and/or fees herein imposed, upon which beverages and/or articles and/or liquids, present or possessed as aforesaid, or with refer-
ence to which, the taxes and/or license fees herein imposed are due and unpaid, or which do not bear properly cancelled authentic stamps issued by the excise administrator, or which do not bear any other evidence of the payment of taxes and/or license fees required by this act, or by any rule or regulation of the commission, shall impose upon and create upon the owner and/or person in control of said premises and/or in possession of said beverages and/or articles and/or liquids described in this section (Sections 12-801—12-815), the obligation to pay all the taxes and/or license fees due and unpaid at double the rate fixed hereinbefore in this section (Sections 12-801—12-815) on or with respect thereto, to the excise administrator, although the presence of said beverages and/or articles and/or liquids described above in this section (Sections 12-801—12-815), and/or the possession of the same be unlawful under the provisions of this act.”

It will be observed from the first quoted provision of the statute that the tax is levied “on the sale or gift, and/or the withdrawal for sale or gift,” and is levied and imposed against any permittee holding any distiller’s permit or a rectifier’s permit or a liquor wholesaler’s permit.

The above provisions, I think, are addressed particularly to define the taxable event rather than to define the time when the tax is to be paid. The later provision, however, that “such stamps shall be cancelled by the permittee at the time of the withdrawal of said beverages for sale or gift” is addressed to the time of affixing and cancelling the stamps as required by law, and it is important, therefore, that this language be given careful consideration. The language used very plainly states that the stamps are to be affixed and cancelled “at the time of the withdrawal of said beverages for sale or gift.” I am confronted then with the question as to what is meant by the term “the withdrawal of said beverages for sale or gift.” As I understand it, it has been suggested that the term refers to the time when the actual sale to a retailer by a wholesaler takes place, but it seems to me in view of the later provisions of the statute, which have been quoted, such a construction would make of such later provisions a nullity.

Included in the list whose possession of beverages upon which the tax has not been paid is unlawful, are wholesalers saving
only one exception, and that is as to beverages which are exempt from tax. (See Sec. 12-805 and Sec. 12-806, supra).

In other words, if the beverage is not exempt from the tax under the law it must be stamped when in possession of the wholesaler, and if it is not so stamped, his possession is unlawful.

I think it is clear, therefore, that when the statute provides that such stamps shall be cancelled by the permittee at the time of the withdrawal of the beverage for sale or gift, it refers to the time when the beverages are brought from the distillery or from a government bonded warehouse to an Indiana wholesaler's premises. This conclusion, I think, is supported by the further provision in the first quoted paragraph above that "no permittee mentioned in this paragraph shall sell or give or withdraw any such beverages for sale or gift, * * * if the container thereof shall not have affixed thereto duly cancelled stamps of the proper denominations." * * * The language "no permittee mentioned in this paragraph" clearly includes distilleries and rectifiers.

In my opinion, the question submitted should be answered to the effect that stamps evidencing the payment of the excise stamps on alcoholic spirituous beverages should be affixed and cancelled at the time such beverages are brought from a distillery or from a government warehouse to an Indiana wholesaler's premises.

DIVISION OF LABOR: Acceptance of assignments of wage claims under the 1939 Act—whether right of commissioner to receive same is affected by the fact that employee voluntarily quit employment.

April 17, 1941.

Mr. Thomas R. Hutson,
Commissioner of Labor,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 10, 1941, reads as follows:

"Referring to the Acts of 1939, Chapter 95 specifically Sections 2 and 5, Page 503, the question now arises as to the right of the Commissioner of Labor to