

cult to see how such a mistake could have been made, but even so, it would appear that this error should have been corrected, if it was an error, under the provisions of the statute already referred to, and to open up the question now, in the absence of very conclusive proof of a mutual mistake, is to practically nullify the statute in that behalf.

I desire to say that I do not think that the letter of the pre-qualification engineer who issued these certificates can be received to vary the terms of the certificates. It seems to me that upon the basis of what has been submitted, I am required to hold that the person described in your letter as the low bidder was not qualified to bid for the construction of the superstructure.

ALCOHOLIC BEVERAGE COMMISSION: Procedure for disposition of license upon death of permittee.

November 7, 1939.

Alcoholic Beverages Commission,
225 State House,
Indianapolis, Indiana.

Attention: Mr. Lowell H. Patterson,
Vice-Chairman.

Re: Virgil D. Smith.

Dear Sir:

I have before me your letter of November 2, 1939, in which you request an official opinion calling for the interpretation of section 7 of the Alcoholic Beverage Act as amended during the 1939 session of the legislature. Your letter also calls for an outline of procedure under this section relative to estates of permittees.

It is my opinion that in the event of the death of a permittee where an administrator or an executor is appointed, there are three courses that said administrator or executor may elect to follow under this section.

First: If the administrator or executor or his agent may qualify to operate for the unexpired period of the permit, upon petitioning the court for such authority and making a showing and the court making a finding that said administrator, executor or agent is qualified under the provisions of the Alcoholic Beverage Act to qualify as a permittee, and after the court

makes a finding of the qualifications, before the business can be operated he must also have the approval of the Excise administrator. And, upon such approval or application for approval, the party seeking the approval must pay a fee of \$10.00 to the Excise administrator.

Second: The executor or administrator may petition the court for authority to sell the business of the deceased, together with whatever interest the estate may have in the permit, or otherwise transfer said permit to a third person, with the court's approval after a showing to the court and a finding that said person is qualified under the provisions of the Alcoholic Beverage Act to be a permittee. Then, this must also be approved by the Excise administrator before said business may be operated by said purchaser or assignee. And, upon such approval or application for approval, the party seeking the approval must pay a fee of \$10.00 to the Excise administrator.

Third: The administrator or executor of the estate of the deceased holder thereof may surrender such permit and the same shall be cancelled and annulled and a refund shall be made by the Excise administrator pro rata to the period of time yet unexpired of the period which said permit was issued, less a deduction of a cost fee of \$5.00 to be paid to said Excise administrator.

It is further my opinion that the \$20.00 fee referred to in this section is only applicable where there is not an estate involved or where there is not a receiver or a trustee in bankruptcy or a guardianship pending in court, and where the permittee sells or assigns to a third person, or changes from one location to another location, and where the local board must pass upon the qualifications of the transferee or assignee or new location.