section 4. In other words, I do not think that section 4 is intended to relate to any particular grade, but is merely an additional guarantee to the consumer against fraud or deceit, where fruits or vegetables are designated as of superlative quality by any such words or phrase as are quoted in section 4.

EXCISE DIRECTOR: Duties of director with reference to disposition of various license fees and excise taxes collected by him.

Hon. Paul P. Fry,
Excise Director,
Indianapolis, Indiana.

May 18, 1933.

Dear Sir:

I have before me your letter requesting an official opinion as to your duties under chapter 80 of the Acts of 1933, with reference to the disposition of the various license fees and excise taxes collected by you.

Section 8 (f) of said act provides that the director shall pay the license fees collected by him upon the issuance of permits to manufacture alcoholic malt beverages "monthly into the state treasury." Acts of 1933, page 502. The same section provides that one-half of the fees collected by him for the issuance of permits to wholesalers and retailers, for the sale of alcoholic malt beverages, shall be paid "monthly into the state treasury for credit otherwise provided in this act." (Our italics.) Acts of 1933, page 503.

The fees collected under section 9 of said act are required to be paid by the director "to the state treasury." Acts of 1933, page 503.

The portion of the fees collected for the issuance of permits to restaurants, hotels and clubs (section 12 of said act) are required to be paid by the director "into the state treasury"; and the fees collected for the issuance of permits for dining cars and boats are required by the same section to be paid "to the treasurer of state", it being provided that when the same is paid, "it becomes a part of the general fund." Acts of 1933, page 506.

All license fees and excise taxes collected under section 13 of said act are required to be paid "monthly into the general fund of the state treasury." Acts of 1933, page 509.
The license fees collected upon the issuance of permits to manufacture alcoholic vinous beverages as provided in section 14 of the act are required to be paid "monthly into the state treasury." Acts of 1933, page 510.

The fees collected pursuant to section 15 of the act are required to be paid by the director "into the state treasury." Acts of 1933, page 511.

The fees collected under section 19 of the act are required to be paid by the director "monthly into the state treasury." Acts of 1933, page 518.

No express provision is made as to the payment into the state treasury of the license fees collected under section 20 of the act. The license referred to in said section is a license for the sale at retail of alcoholic malt and vinous beverages by hospitals, sanatoriums and resort hotels having a natural mineral spring located on the premises, wherein medical care, or natural mineral spring waters having medicinal properties are regularly given or furnished to guests by the management thereof, as a part of the services regularly rendered to such guests. The section provides, that section 12 shall not apply to such places, and then proceeds to authorize the issuance of a retailer's license at a less fee than that provided by section 12 for the retail sale of alcoholic malt beverages. I think the fees collected under this section should be distributed as similar fees collected under section 12 of the act, which requires one-half of such fees to be paid "into the state treasury."

Section 24 of the act makes no express provision as to whom the fees therein provided for shall be paid. In the absence of some express provision to the contrary, these fees would be payable to the state treasurer as a part of the general fund of the state. See Acts of 1925, page 70; Burns Annotated Indiana Statutes of 1926, section 12587, subdivision "13th". Section 32 of chapter 80, supra, provides, among other things, as follows:

"It is hereby made the duty of the director to collect all of the license fees herein provided, and pay the same over to the several treasurers as herein provided; and all such funds paid over by him to the treasurer of the state shall be for credit to any account of the general fund of the state, to be known as the 'excise fund'"
and all expenses incurred in the collection of such license fees, and in the operations of the excise director, shall be paid by the treasurer of state out of said funds, upon warrants of the auditor of state.”

You submit the following questions:

One: Will the fees collected for permits for train dining car and boat dining rooms, and the money received and collected under the provisions of section 13, when paid into the state treasury, go to the general fund of the state treasury for the payment of general expenses of the state?

Two: Will the license fees collected under the provisions of section 12 (3) for the authorization of the sales of alcoholic malt beverages by hotels for consumption in the rooms thereof, be credited to the “excise fund”?

Three: Will the license fees provided for under section 20 be paid to the state treasury for credit to the “excise fund” as provided by section 32?

Four: Will the license fees collected for permits to wholesale and permits to retail spirituous beverages as authorized by section 24 be paid into the state treasury for credit to the “excise fund”?

The problem of disposition of the fees referred to in your last question above is the same as the problem as to the fees referred to in your second question, there being no express provision upon the subject as to whom the fees should be paid. As already pointed out, however, in such a case such fees are required to be paid to the state treasurer, under chapter 28 of the Acts of 1925, which places in the general fund of the state, after referring to certain special funds:

“All other monies collected in any manner by the State of Indiana through any of its boards, commissions, officers, or agents pursuant to any provisions of law, except” (exceptions are not material here).

It will be noted from the preceding paragraphs of this opinion that somewhat varying provisions are made with reference to the payments of the various fees whose collections are authorized by the different sections of the act, and which are required to be paid into the state treasury; but when these provisions are considered in connection with the provisions of section 32, above quoted, I think the intent of the legisla-
ture is clear. All fees which are to be paid into the state treasury, of course, are to be paid to the state treasurer. Section 32 provides, explicitly, that all funds paid over by the director to the state treasurer “shall be for credit to any account of the general fund of the state, to be known as the ‘excise fund’.” Notwithstanding the varying provisions as to different fees as expressed in preceding sections of the act, some of which may possibly be considered in conflict with the foregoing provision of section 32, insofar as there is a conflict, the provision of section 32, under well recognized rules of statutory construction, will prevail. If there is an irreconcilable conflict between sections of the same act, the provision of the later in position prevails.


It follows from what has been said herein that all fees collected by you, which, under the act are payable into the state treasury, should be credited to an account of the general fund of the state, to be known as the “excise fund”, and after the payment of the collection expenses the same should be distributed as provided in section 32 of the act. This rule would apply not only to the fees which are expressly payable into the state treasury, but also to the fees such as those provided in section 24, where no express provision is made as to whom the fees should be paid. Your first question is answered in the negative. The second, third, and fourth questions are each answered in the affirmative.

WEIGHTS AND MEASURES, DEPARTMENT OF: Power to enforce rule regulating capacity of containers used for the sale of ice cream at retail.

May 20, 1933.

Hon. John Taylor, Director,
Dairy Products Bureau,
Division of Weights and Measures,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter of May 11, 1933, which reads as follows: