tor may deem necessary. Such certificate so obtained by the dealer when properly executed, shall be accepted by the State of Indiana in lieu of the license fee otherwise due upon the sale of the products mentioned in such certificate, and provided such original certificate so obtained shall be filed with the state auditor with the report of the dealer covering sales for the period during which such certificates were obtained.” (Our italics.)

It will be seen that the language of the statute requires that the “purchaser” sign the certificate and that no provision is made for the signing by another.

It is therefore my opinion that such certificates signed by persons other than the “purchaser” are not valid and should not be accepted in lieu of the license fee otherwise imposed.

ALCOHOLIC BEVERAGES DIVISION: Transfer of permits from one locality to another.

January 8, 1936.

Hon. R. H. Wyman, Chief Clerk,
Alcoholic Beverages Division,
State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your request for an official opinion as follows:

“Please be advised that this Department would like an official ruling regarding a provision of the Alcoholic Beverage Act of 1935 that a person may transfer his permit from one location to another, but which does not specifically limit such transfer to the same municipality.

“Inasmuch as Section 40 provides under subsection (f) for the distribution of two-thirds of all retailer’s license fees to the corporation in which the establishment is located, this would conflict with the transfer from one municipality to another. Therefore we would like an official ruling concerning this matter.”
While your request does not specifically limit your question to the transfer of location of retailers' permits to sell alcoholic beverages, the second paragraph thereof seems to imply such limitation. However, we are including both retailers' and dealers' permits to sell alcoholic malt beverages and alcoholic spirituous beverages within the purview of this opinion.

Section 7 of the Alcoholic Beverages Act of 1935, (Chapter 226, Acts 1935), provides:

"Notwithstanding any other provisions of this act, transfers of permits from one holder to another holder, or from one location to another location may be made in case such permits have not less than three (3) months of unexpired term, upon such terms and under such rules and regulations as the commission may prescribe: Provided, however, That the application therefor shall conform in respect to notice and publication and investigation before the local board as in cases of original application therefor, and subject also to the payment of a cost fee in advance of twenty dollars ($20.00)."

The foregoing provision, being part of Clause (1) of said Section 7, and in fact, no part of said Section 7 makes any express reference to Section 40 of the same Act referred to in your request. Section 40 of this Act deals with the imposition, collection and distribution of alcoholic beverage taxes and license fees, and is not intended to control the issue or transfer of permits. The fact that Section 40 requires the distribution of a portion of the license fee to the municipality in which the license is issued has no bearing on the propriety or legality of the transfer of location of the permit after the same has been issued.

The question remains, however, independent of Section 40, as to whether the situs of a permit is removable to a municipality other than the municipality in which the property as to which such permit was originally issued, is located.

All of the provisions of the Act which determine the desirability and conditions under which the same may be made are contained within the first clause of Section 7, quoted in part above. An analysis of this section clearly indicates that
such transfer "may be made * * * under such rules and regulations as the commission may prescribe," and subject to the provision that "the application therefor shall conform in respect to notice and publication and investigation before the local board as in cases of original application therefor, and subject also to the payment of a cost fee in advance of twenty dollars ($20.00)."

The existence of rules and regulations is not a necessary condition precedent to the transfer of the location of the license, but if such rules and regulations are in existence, they must necessarily be complied with. The contents of the proviso in this clause, however, bring into operation, necessarily, all the provisions with reference to qualifications necessary to obtain the permit originally. We have in mind particularly the qualifications of the applicant with respect to the new location.

Thus, if the applicant is an individual already holding a license in the situs of the original issue, he can not very well qualify in a new locality, for the simple reason that he would not have the necessary residence qualification of one year's residence therein. If, however, the applicant is a corporation, the resident manager of such corporation must, under the provisions of Sections 10 and 11 (in case of alcoholic malt retailers' or dealers' permits) and Sections 18 and 19 (in case of liquor retailer or liquor dealer permits), possess the same qualifications "required for the issue of a license to him." This would require that the person who has advertised as a manager of the corporation applicant for a transfer of location must, among other things, be a resident of the town or city for at least one year continuously prior to the date of the application for the transfer of the permit, and, of course, his qualifications must conform to the qualifications required in all other matters as well as residence, as set forth in Section 10 of the Act, and such qualifications are subject to investigation and report by the local board and to the judgment and approval of the Alcoholic Beverage Commission before the granting of the application for transfer of location.

Moreover, in case of liquor retailers' permits, which are limited in ratio to the population, no transfer of location could be granted in violation of the provisions of Section 7
of the Act, limiting the number of liquor retailers' permits issuable to one for each one thousand or fraction thereof, nor could a transfer of location of a permit be made from one municipality to a municipality wherein, on account of population, a higher license fee must be initially paid, nor could a transfer of location of a liquor retailer's permit be made to a location within a municipality where such license was not originally issuable or in which such license is not issuable at the time of the granting of the application for transfer. There is no provision in the Act for determining the fees to be paid for the issue of a permit of the character herein discussed from any standpoint except its location at the time of the issue thereof, and no provision is made in the Act for the collection of a higher license fee induced by the transfer of the location of the permit from one municipality to another.

We do not interpret the language of Clause (1), Section 7 of the Act, "notwithstanding any other provisions of this Act", to apply to any provisions of the Act except those dealing with the "transfer of permits from one holder to another holder, or from one location to another location." It certainly was not the intention of the legislature in writing this phrase, to enable the provisions of the Act generally to be defeated by means of a transfer of location. Support is given to this construction of this clause by the circumstance that immediately preceding it in the same clause of the same section are provisions relating to the transfer of licenses in cases of deceased holders or of holders who have become non compos mentis.

Subject to the foregoing observations, we see no objections to the transfer of the location of a permit merely because the new location is located within a different municipality from the location covered by the permit when granted.