

GOVERNOR'S OFFICE: Intoxicating liquor; right to distribute for advertising purposes.

August 4, 1937.

Miss Aline Laws,
Executive Secretary,
Indianapolis, Indiana.

Dear Miss Laws:

I herewith return the telegram of Mr. Zirpoli, chairman of the California Young Democratic Convention.

I find no law which would permit the importation into this state of California wine, except by those holding an importer's permit. Section 32 of the Alcoholic Beverages Act makes it unlawful so to do. Subsection 5, section 31, makes it unlawful for any person to give away to any person other than a guest or a member of his family, any alcoholic beverages, or possess the same, except that they be the holder of an alcoholic beverage permit. Subsection 8, section 31, makes it unlawful for any person, for his own use, to carry on or convey to or consume on or about the premises of any permittee any alcoholic beverages not then and there purchased of such permittee on said premises. Subsection 10, section 31, makes it unlawful to sell or give away to any person under the age of twenty-one years any alcoholic beverages.

I know of no special permit that might be granted which would authorize this distribution.

The Alcoholic Beverages Commission advises me that they have consistently turned down similar requests for distribution for advertising purposes.

FIRE MARSHAL, STATE: Amusements and theaters, Fire Marshal granting permits to.

Hon. Clem Smith,
State Fire Marshal,
State House,
Indianapolis, Indiana.

August 5, 1937.

Dear Sir:

I have at hand your recent letter reading as follows:

"I wish to have an opinion concerning chapter 83, Acts of 1937. This is in regard to the licensing by

the Fire Marshal of theatres and other places of amusement. We have some carnivals operating in the state, under tents, which are putting on a regular stage production wherein all the equipment is similar to the equipment used in the regularly constructed theatre buildings.

“We also have cases of show troupes coming into the state and operating in our public school houses and an admission fee is charged. These cases vary to a great extent as far as the dividing of the profits is concerned.

“It is my desire to be informed regarding the true interpretation of the law in these cases, and whether they should be licensed as Class C or otherwise.”

Your request concerning the licensing of carnival shows and also shows by professional troupes in our public school houses will for the purposes of the opinion be considered together. From the facts stated in your letter I assume that the shows given in school buildings are given by or under the auspices of school or civic organizations, the control of the building not having been relinquished by the school authorities by renting or leasing the same. Such being the case, the powers and duties of the Fire Marshal as to classification and licensing of such are the same.

The powers and duties of the State Fire Marshal bearing upon the question herein in question are set out in the first four sections of chapter 83, Acts of 1937. They are as follows:

“Section 1. Be it enacted by the General Assembly of the State of Indiana, That on or after the first day of July, 1937, it shall be unlawful for any person, firm, or corporation to operate any moving picture show, dance hall, cabaret, night club, or any other place of public amusement or entertainment in any building, theatre or hall, to which the public is admitted or to operate any other place of public entertainment or amusement within the state, unless the owner, lessee, occupant or agent of such building, theatre, hall or place of amusement or entertainment has the approval of the State Fire Marshal to use such building, hall or place for such purpose, and has been granted a permit, as herein provided. All inspections made by the State Fire Marshal by virtue of the provisions of this Act shall be made in strict compliance with the provisions of

this Act and all of such buildings, halls, theatres and other places shall conform with the rules and regulations of the State Fire Marshal."

"Sec. 2. Any person, firm or corporation desiring to operate any moving picture show, dance hall, cabaret, night club, with stage or floor show, theatre, hall or other place of public amusement or assembly, where entertainment is given, shall apply for a permit so to do, to the State Fire Marshal."

"Sec. 3. Except as herein otherwise provided, no building to which the public is admitted and no audience room in which exhibitions or entertainments are given shall hereafter be open to the public unless such building, place or room is operated in full compliance with the requirements of this Act, and the rules and regulations of the State Fire Marshal applying to such buildings, places or rooms, and unless such building, room or place has been approved, as herein provided."

"Sec. 4. For the purposes of this Act, such buildings, rooms, halls and places so to be approved shall be classified as follows:

(a) Class A shall include theatres, opera houes and moving picture shows operated in any building or part thereof having a seating capacity of four hundred fifty or more persons, or having an auditorium floor area in excess of three thousand one hundred fifty square feet, for which the inspection fee shall be fifteen dollars per year.

(b) Class D shall include theatres, opera houses and moving picture shows operated in any building or part thereof having a seating capacity of less than four hundred fifty persons, or having an auditorium floor area of three thousand one hundred fifty square feet or less, for which the inspection fee shall be ten dollars per year.

(c) *The provisions of this Act shall not include:* (1) public dance halls, night clubs with stage or floor shows, and other places of public amusement given in any building or part thereof and/or under tents or canvas, *nor shall this Act include* (2) places of amusement or entertainment that are under the direct supervision of the athletic commission of the State of Indiana: (3) halls, gymnasiums or places of assembly wherein contests, drills, exhibitions, plays or displays, dances, concerts or other types of amusement are held by schools, universities, social or fraternal organizations, lodges, societies, labor unions or churches; (4) institutions in which the

inmates are involuntarily detained; or (5) any state, city or county building or property.

(d) The several halls, gymnasiums or other places of assembly, amusement or entertainment designated in subsection (c) of this section shall, for the purposes of this Act, be classified as Class C places of amusement. *All Class C places of amusement shall be under the direct supervision of the State Fire Marshal and shall be inspected at such times as the State Fire Marshal shall deem necessary to insure adequate safety to the public. After an inspection is made and if the State Fire Marshal shall approve such place of amusement, a Class C permit shall be issued therefor, but no charge for such permit shall be made.*"

It is apparent that by section one of said Act that general powers are granted the State Fire Marshal to regulate the enumerated places of public amusement, which would, in my opinion, include the amusements of which you speak in your letter, if it were not for parts C and D of section 4. These provisions are exceptions to the general powers granted the Fire Marshal in the first section of the Act and subjects the Act to the rule of statutory construction that, if there is an apparent conflict in the provision of a statute, the specific provisions take precedence over the general provisions of the Act. Therefore, in view of the express wording of the italicized portion of section 4, part c, it is apparent that it was the legislative intent to except the amusements enumerated therein. This intent to except such is likewise apparent when the provisions of the Act are considered as a whole. It appears to me the primary purpose of the Act is to regulate theatres, opera houses, and motion picture shows as most of its provisions deal with such places and the fees charged are only assessed against the same.

It being clear by the express language of the Act that all Class C amusements are exempt from complying with the Act before July 1, 1937, from making application for a permit, or paying the necessary fees, the question remains whether the Fire Marshal can regulate the same. The amusements of which you inquire, namely, carnival tent shows and shows given in school houses, are under clauses (1) and (3) of part C of section 4 of the Act classified as Class C amusements and the answer to the foregoing question determines your regulation of such amusements.

An examination of the italicized part (d), section 4, in my opinion, discloses a clear grant to the Fire Marshal of a discretionary power of supervision over all Class C places of amusement. This is especially evident by the language "and shall be inspected at such times as the State Fire Marshal shall deem necessary." In other words, the section provides that when the Fire Marshal deems it necessary he may inspect any Class C place of amusement and upon approving such place shall issue a Class C permit at no cost to the amusement inspected.

Therefore, in answer to specific questions of your letter, it is my opinion that the amusements of which you inquire should be classified under Class C and you may inspect and grant permits to the same, at no costs, whenever you may deem it necessary to insure adequate safety to the public.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Justice of the peace, authority in garnishee proceedings. Whether court of justice of the peace is a court of record.

August 9, 1937.

Homer O. Stone, Supervisor,
 Division of Small Loans and
 Consumer Credit,
 Department of Financial Institutions,
 State House,
 Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to sections 2-4401 to 2-4406a of the Cumulative Pocket Supplement of Burns Indiana Statutes Annotated, 1933, and requesting an official opinion in answer to the following questions:

"1. Do Justices of Peace have jurisdiction to issue supplemental proceedings under section 2-4401-2-3-6.

"2. Has a Justice of Peace authority to issue an order against wages in accordance with the aforesaid section.

"3. Does the aforesaid law apply to all judgments generally, that is, regardless of when any such judg-