

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N.J.

BULLETIN NUMBER 17.

March 5, 1934

#1 TURPITUDE - WHAT CONSTITUTES - RECEIVING STOLEN GOODS

February 25, 1934

Hon. Frank A. Boettner,  
City Hall,  
Newark, N. J.

Dear Mr. Boettner: Re: X-----.

I have before me your request for a ruling as to whether the above named applicant should be disqualified from obtaining a license.

It appears that in 1920 he pleaded non vult to a charge of receiving stolen goods and was placed on probation for two years.

Conviction of the crime of receiving stolen goods, knowing them to have been stolen, constitutes conviction of a crime involving moral turpitude. If such conviction does not bring a sense of shame, it ought to (Bulletin 15, item 5). The fact that there have been no complaints against him of any nature during the last thirteen years and that he has conducted his place respectably in compliance with the law are happily mitigating circumstances but do not change the conclusion that the applicant has been convicted of a crime involving moral turpitude which demands his disqualification under the Alcoholic Beverage Law.

Because of this conclusion, it is not necessary to consider the additional question of the effect of the fine imposed on him in 1920 under City Ordinance for conducting a gambling house.

Very truly yours,

D. Frederick Burnett  
Commissioner.

#2 TURPITUDE - WHAT CONSTITUTES

March 3rd, 1934.

Mayor C. Benson Wigton,  
City of Plainfield, N. J.

Dear Sir:

Acknowledgment is hereby made of your letter inquiring as to whether a conviction under Section 3 of Chapter 246 of the Laws of 1925 constitutes a crime involving moral turpitude within the meaning of Section 22 of the Control Act.

The courts have generally defined a crime involving moral turpitude as something immoral in itself, regardless of the fact that it is punished by law. Specific crimes are referred to in Bulletin No. 2 where the Commissioner pointed out that in many instances the matter will rest in the considered judgment of the issuing authority. The guiding principles are well set forth in Rudolph v. United States, 6 Fed. (2nd) 487 (App. D. C. 1925) cert. denied 46 Sup. Ct. 20 (1925), where the court said:

"There is no hard and fast rule as to what constitutes moral turpitude. It cannot be measured by the nature or character of the offense, unless, of course it be an offense, inherently criminal, the very commission of which implies a base and depraved nature. The circumstances attendant upon the commission of the offense usually furnish the best guide. For example, an assault and battery may involve moral turpitude on the part of the assailant in one case and not in another. Intent, malice, knowledge of the gravity of the offense, and the provocation, are all elements to be considered."

It may be that the issuing authority will find that a conviction under the Bottle Act (P.L.1925, C. 246) involves moral turpitude where accompanied by an intent to defraud and at the same time find that an innocent violation of the Act does not involve moral turpitude. In any event, the problem raised by you cannot be decided by the Commissioner, but must necessarily be decided by the issuing authority after a consideration of all of the pertinent facts.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

BY  
NATHAN L. JACOBS,  
Counsel-in-Chief.

#3

## MUNICIPAL RESOLUTIONS - SUNDAY SALES

March 3rd, 1934

Robert C. Hendrickson, Esq.,  
14 Cooper Street,  
Woodbury, N. J.

Dear Sir:

Acknowledgment is hereby made of your letter inquiring as to whether a municipality which has issued temporary licenses under a resolution containing no restrictions against Sunday sales of alcoholic beverages may thereafter prohibit such sales.

Section 37 of the Control Act provides that the Issuing Authority may regulate the conduct of any business licensed to sell alcoholic beverages at retail and may prohibit the sale of all alcoholic beverages on Sunday, subject to any referendum thereafter held

Indeed, even if the statute were silent with respect to Sunday sales, the Issuing Authority could, in the exercise of its police powers, prohibit such sales. See Meehan vs. Board of Excise, 73 N.J.L.382 (Sup. Ct. 1906); Crocker vs. Board of Excise, 73 N.J.L. 460 (Sup. Ct. 1906).

The fact that Sunday sales were lawful at the time of the issuance of the temporary licenses will not bar the subsequent passage of a resolution prohibiting such sales. The Issuing Authority may adopt reasonable regulations with respect to the conduct of the business of licensees at any time and such regulations when adopted are binding upon prior as well as future licensees. See Woolen and Thorton, The Law of Intoxicating Liquors, Sec. 331.

"It is the peculiar province of the State, either by constitutional or legislative enactment, or through authority delegated to its municipalities, to exercise its police

power for the protection of the lives, health, and property of its citizens, as well as to maintain good order and preserve public morals. It is everywhere conceded that the traffic in intoxicating liquors affects all these subjects and that it is, hence, a proper subject for police regulation. It is essential, therefore, that the power to regulate shall be a continuing one, ever present, and available, to be exercised by the State as the emergency may require. Hence, the rule that neither the State nor any of its agents to whom the power has been delegated, can divest themselves of the right to impose such other additional restrictions upon the sale of intoxicating liquors as the maintenance of good order or the preservation of public morals would seem to require."

The decisions in Hoboken v. Goodman, 68 N.J.L. 217 (Sup. Ct. 1902) and Hoboken v. Greiner, 68 N.J.L. 592 (Sup. Ct. 1902) are to the same effect.

It is the Commissioner's ruling that the Issuing Authority of a municipality may, in the exercise of its discretion, prohibit Sunday sales which prohibition binds prior, as well as subsequent, licensees.

Yours very truly,

D. FREDERICK BURNETT,  
Commissioner

BY NATHAN L. JACOBS,  
Counsel-in-Chief.

#4 MUNICIPAL RESOLUTIONS - LIMITATION OF LICENSES

March 3, 1934.

Hon. Thomas E. Duffy,  
City Hall,  
Passaic, N. J.

Dear Mr. Duffy:

I have your letter re limitation of number of licenses in the City of Passaic, and value it the more because you state the proposition so candidly.

You are correct in concluding that the situation is governed by the Bernardsville case (Bulletin #6, item 5) to the effect that where a temporary license has been issued and acted upon by the licensee, it is too late for the municipality to rescind it in the absence of any fraud or deceit in obtaining it. If the licensee is otherwise qualified, he cannot be deprived of his permanent license by a municipal resolution limiting the number of licenses enacted after the temporary license in question was issued.

The fact that your City Commissioners had, prior to the enactment of the Control Act, informally agreed to grant only 112 retail licenses and that the discussion and decision was given wide publicity before any temporary licenses were issued, does not take the case out of the general principle because no resolution

on the subject was ever passed by your Commissioners and consequently there has been no official action by the Commissioners which is binding upon the licensees.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

#5 MUNICIPAL RESOLUTIONS - LIMITATION OF LICENSES

February Twenty-six  
1934

D. Frederick Burnett, Commissioner.

Sir:

The Trenton Commissioners appointed an Excise Board to act on applications for Plenary Retail Consumption licenses. The said board gave temporary licenses to almost every applicant. When the time came for giving permanent licenses, the board set an arbitrary figure of 250 as the maximum number of permanent licenses to be granted. When the said amount of 250 was granted, the board refused to grant any additional licenses. The only reason given by them was, and still is, that the number which had been set by them was reached.

Will you kindly inform me whether a person who has been granted a temporary license, and who has filed an appeal can continue dispensing alcoholic beverages until his appeal is heard, or must he close up until his appeal has been determined?

Respectfully yours,

(Signed) Vincent A. de Benedetto

March 4, 1934.

Vincent A. de Benedetto, Esq.,  
Trenton, N. J.

Dear Sir:

As you state the facts the case is governed by Bulletin #6, item 5, copy of which is enclosed.

Presumably, the Board will do its full duty without the necessity, delay or expense of an appeal.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

March 4, 1934.

Board of Alcoholic Beverage Control of Trenton,  
Trenton, N. J.

Gentlemen:

I have letter from Vincent A. de Benedetto, as per carbon enclosed. Herewith copy of my reply, also copy of Bulletin #6, item 5.

If the facts bring it within the ruling and inadvertently your Board has acted contrary thereto, please see that immediate action is taken to correct this situation and do justice to all those persons to whom temporary licenses were issued before resolution limiting the number was enacted, which I understand was on February 3rd, providing, of course, that they are otherwise qualified.

The official bulletin about to be issued contains copy of letter recently written to Thomas E. Duffy, City Counsel of Passaic, which deals with the same problem from a different angle.

Very truly yours,

D. Frederick Burnett  
Commissioner.

#6 DEPARTMENT STAFF - COMPETENCY TO ACT IN MUNICIPAL EXCISE MATTERS

Mr. D. Frederick Burnett.

Dear Sir:

I want to thank you for your letter of the 23rd inst. In reference to the last paragraph of your letter do I understand it to read that an investigator of your department is barred from being a member of a borough council that votes for or against liquor license or is he barred only from sitting on the council when same is voting for or against such licenses.

I feel quite sure that you mean that he is barred entirely from being a member of the council as an investigator sitting with any governing body would have a tendency to use his influence for or against an applicant although he might not be able to vote directly. He would also in a way not be able to perform his duty to your department if he were a member of the council. He could also use certain influence on the police department in keeping them from enforcing the laws.

I would appreciate it very much if you will let me hear from you at your earliest convenience so that I may understand your ruling better.

Very truly yours,  
Maurice Schwartz.

March 4, 1934

Mr. Maurice Schwartz,  
Red Bank, N.J.

Dear Sir:

I have yours of the 26th ult.

The ruling was not intended to bar a member of my staff from being a Councilman. It was designed to bar him from acting on applications for liquor licenses. I cannot imagine any member of my staff using his influence, as you surmise, on any local police departments "in keeping them from enforcing the laws".

If this is the fact, prove it to me and I will act by dismissing the man from the Department. To prevent him from being a member of the Borough Council would be only a half way measure in such a case.

What are you driving at anyway?

Very truly yours,  
D. Frederick Burnett,  
Commissioner

#7. LICENSES - NECESSITY OF ENGRAVING

In Bulletin 15, Item 4, correspondence with the Borough of Tavistock is set forth re its request for dispensation from the rules concerning permanent licenses, Bulletin 12, Item 6, which require (Rule 5) that the issuing authority is to cause the license forms to be printed respectively in bound books.

The following correspondence sets forth the rulings of Hon. Walter R. Darby, State Auditor.

February 26, 1934

E. Chester Ridgway, Clerk,  
Borough of Tavistock,  
New Jersey.

Dear Sir:-

Kindly refer to my letter to you of February 12th.

I have reply today from Walter R. Darby, State Auditor, under date of February 24th, in response to the letter I wrote him on the 11th, asking to what extent he could reasonably go in making concessions from the rule requiring engraved licenses, and reading:

"Acknowledging receipt of yours of the 11th inst. regarding alcoholic beverage licenses I believe that an engraved license should be required. As I view it however the engraved license need not be made for each municipality, but that some printer or engraver might be found who would make up stock engraved licenses which could be adopted to any municipality. They might be furnished either singly or in books of any required number. That is to say, a municipality might be able to obtain one stock engraved certificate, a half dozen or two dozen. This should reduce the cost of the certificates. Similar plan is followed with regard to temporary improvement bonds and tax notes. The main part of the instrument is generally applicable to all municipalities, but blanks are left so that they may be made applicable to any municipality.

Yours very truly,  
(Signed) Walter R. Darby,  
State Auditor."

Very truly yours,  
D. FREDERICK BURNETT  
Commissioner

New Jersey State Library