

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 19.

March 28, 1934.

#1 INTERSTATE COMMERCE - SHIPMENTS INTO STATE -  
CONSIDERATIONS INVOLVED

Dear Sir:-

I have given considerable thought to the problem of shipments into this State from foreign States and Countries. The Webb-Kenyon Act, (37 Stat. 699) divested intoxicating liquors of their interstate character in certain cases, and prohibited the shipments of such liquors into a State, in violation of the laws of such State. See McCormick & Co. vs. Brown, 286 U. S. 131, 76 L. Ed. 1017 (1932). Section 2 of the 21st Amendment expressly prohibits the importation into any State for delivery or use therein, of intoxicating liquors, in violation of the laws thereof.

In view of the foregoing, and the provisions of the Control Act, I believe that all shipments into the State may be regulated. However, I am not entirely clear as to what type of regulation will most effectively accomplish the purposes of the Control Act.

The New York Control Board has adopted regulations which provide that no liquors shall be shipped into the State unless consigned to a licensee. At present I am inclined towards the adoption of a regulation prohibiting the delivery into this State of alcoholic beverages, except beverages owned by or sold to the holder of a New Jersey Manufacturer's or Wholesaler's License. Such a regulation would aid tremendously in effectuating proper control, and would assure to New Jersey the payment of all taxes due it. There are however, disquieting considerations, especially in cases of purchases outside this State, by residents of New Jersey, of liquors intended for their personal consumption.

I am giving the matter further thought and expect to promulgate appropriate rules and regulations in the very near future.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

#2 INTERSTATE COMMERCE - SHIPMENTS INTO STATE -  
CONSIDERATIONS INVOLVED.

March 15, 1934

Dear Sir:-

Supplementing my letter of March 12th:

Your friend says: "Licensed transporters refuse to transport from the Port of New York here because their license permits only transportation to manufacturers, wholesalers and retailers." This is not true. The transportation license has no conditions. It permits the transporter to carry alcoholic beverages "into, out of, through and within the State of New Jersey".

Again, he says: "The Commissioner's office tells me that

New Jersey State Library

no license is necessary for personal consumption but the Railway Express Agency does not want to take a chance." Here is the real truth of the matter. The Railway Express Agency as a licensed transporter has the right to transport as above indicated, but is fearful because of the Tax Act (not the Control Act) that the Express Agency will be liable to pay the tax, i.e. if the foreign vendor does not pay the tax, the transportation company may be liable for it. This situation is in process of being remedied, as will appear by Assembly 305, p. 5, l. 31-35, which provides: "No tax imposed by this act shall be payable by the holder of a transportation license issued by the Commissioner of Alcoholic Beverage Control; provided such licensee shall have complied with all of the rules and regulations of the State Tax Commissioner relating to said licensee, and made pursuant to the provisions of the Act."

I cordially approve that provision of Assembly 305.

As to his final remark to the effect that under the Federal Constitution no tax can be levied by New Jersey on direct importation of wines: He has misconceived the question. New Jersey is not trying to levy any tax on importation. Admittedly, the Federal Government alone can do that. But, as you will see by my letter of March 12th, the law is definitely settled that New Jersey may prohibit the shipment of liquors into the State in violation of the laws of the State. It follows that New Jersey, having the power to prohibit entirely, may therefore regulate to such degree as it deems proper.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

#3

ALCOHOLIC BEVERAGES - GIFTS - PRIZES

March 12, 1934.

Maplewood Rifle Club, Inc.,  
5 Milford Ave.,  
Newark, N. J.

Gentlemen:

Acknowledgment is hereby made of your letter inquiring as to whether liquor may be given as prizes at your semi-yearly prize shoots.

Section 1 (v) defines the sale of alcoholic beverages as every delivery of an alcoholic beverage "otherwise than by purely gratuitous title, etc." In the event that a fee is charged for participation in the shoots, then the liquor given as prizes could not be said to have been furnished purely gratuitously. Under such circumstances it would be necessary that your organization have a license before it could properly furnish liquor as prizes. If however, no fee is charged, then the provision exempting purely gratuitous transfers would be applicable, and accordingly, no license would be required.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

By:

Nathan L. Jacobs,  
Counsel-in-Chief

#4

WESTERN UNION

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D. FREDERICK BURNETT  
STATE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL  
744 BROAD ST NEWARK NJ

BOROUGH OF EDGEWATER POPULATION FOUR THOUSAND EIGHTY NINE HAS  
FIXED FEE FOR PLENARY CONSUMPTION LICENSE AT FIVE HUNDRED DOLLARS  
AND FEE FOR PLENARY DISTRIBUTION LICENSE AT THREE HUNDRED AND  
FIFTY DOLLARS STOP MAY BOROUGH REDUCE THESE FEES TO THE STATUTORY  
MINIMUM THAT IS THREE HUNDRED FIFTY DOLLARS AND TWO HUNDRED  
DOLLARS RESPECTIVELY RETROACTIVE AS OF DECEMBER SIXTH NINETEEN  
THIRTY THREE STOP ECONOMIC CONDITIONS DEMAND IT STOP PLEASE  
TELEGRAPH REPLY COLLECT BY WESTERNUNION

JOHN F. DINAN MAYOR MUNICIPAL BUILDING  
EDGEWATER NJ.

WESTERN UNION

MAYOR JOHN F DINAN  
MUNICIPAL BUILDING  
EDGEWATER NEW JERSEY

SO FAR AS CONTROL ACT IS CONCERNED NO PROHIBITION OF RETROACTIVE  
REDUCTION OF FEES PROVIDED ALL ARE TREATED ALIKE STOP AS TO  
MUNICIPAL LAW CONSULT YOUR BOROUGH ATTORNEY

DEPARTMENT OF ALCOHOLIC BEVERAGE  
CONTROL  
BY MAURICE E. ASH  
INSPECTOR IN CHIEF

#5

## RULES CONCERNING SALES BY RETAIL DISTRIBUTION LICENSEES

Rule was heretofore made (Bulletin 16, Item 1) that begin-  
ning March 5th, no sale of less than one (1) pint of alcoholic  
beverages may be made by any such licensee.

Copy of the rule has been mailed to each such licensee.

Our inspectors report that this rule has been obeyed through-  
out the State so far as the sale of "hard liquor" is concerned,  
but I now find that it is being violated by sale of wines - in  
some cases offered as low as 10¢ for a jug of approximately 3 or  
4 ounces. The objective of distribution licenses is not to pander  
to youngsters by bringing alcoholic products within their means.  
The evil needs no further discussion. Liquor Control is not con-  
cerned with too popular prices.

The rule meant exactly what it said. It barred the sale of  
all "alcoholic beverages". Sales made in violation of the rule  
must stop at once. Any violation will result in immediate pro-  
ceedings to revoke the license.

D. FREDERICK BURNETT  
Commissioner

## #6 PARTNERSHIP - TRANSFER OF INTEREST - RETIREMENT OF PARTNER

March 19, 1934

Mr. Thomas J. Markey,  
65 Washington St.,  
Bloomfield, N. J.

Dear Mr. Markey:

I have your letter of March 12th inquiring as to whether, upon the retirement of a partner, the remaining partner can continue in business under the retail license theretofore issued to the partnership.

Section 23 of the Control Act provides that licenses are not transferable and that under no circumstances shall a license be deemed property subject to sale or other disposition. Although a literal construction of the foregoing language might result in the prohibition of operations under the partnership license by the remaining partner after the retirement of a partner, it would seem that no such conclusion was contemplated by the Legislature.

The issuing authority must pass upon the qualifications of each member of a partnership applicant. When, therefore, a license is issued to the partnership, presumably each member thereof is qualified to obtain a license. The retirement of a partner should not prevent the remaining partner from continuing under the partnership license, without being required to pay another license fee.

The true purpose of the prohibition contained in Section 23 against sales and transfers will be carried out by construing it to mean sales or transfers to persons other than those constituting the partnership licensee. This construction finds support in judicial decisions. In United States vs. Glab, 99 U.S. 225 (1878), the Supreme Court of the United States held that where a license was issued to a partnership and thereafter one of the partners retired, the remaining partner could continue in business under the original license. See also Commonwealth vs. James, 32 S. W. 219 (Ky.), where the court said:

"Upon what just ground the retirement of one member of the firm should work a forfeiture of the license we are not able to perceive. The remaining partner has parted with no rights and given up no privilege secured to him by name in the license to the firm. It is true, a license is said to be a personal privilege depending on the fitness of the licensee to properly exercise the grant; but it can hardly be supposed that the issuance of a license to a firm or partnership is made to depend on the personal fitness of any particular member of the firm over that of any other member. Rather should we say that the law requires each member to be personally fit before the license would be granted. And the remaining member is certainly not rendered less fit personally to exercise the privilege of the license because his partner has retired."

It is the ruling of the Commissioner that upon the retirement of a partner, the remaining partner may continue in business under the license theretofore issued to the partnership.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By: Nathan L. Jacobs,  
Counsel-in-Chief

#7 MUNICIPAL RESOLUTIONS - VALIDITY - DISCRIMINATION AGAINST  
LICENSEES IN SAME CLASS.

March 22, 1934

Joseph E. Wenzel, Esq.,  
5 West Main Street,  
Freehold, New Jersey.

Dear Sir:-

Acknowledgment is hereby made of your letter inquiring whether a municipality may prohibit certain retailers from doing business on Sunday, while authorizing other retailers of the same class to do business on Sunday.

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 subsequently held. Indeed, even if the Statute contained no express provision with respect to Sunday sales, the issuing authority could, in the exercise of its police powers, prohibit such sales. See Richard vs. Bayonne, 61 N.J.L. 496 (Sup. Ct. 1898). See also Bulletin 17, Item 3.

Although a municipality may establish reasonable distinctions between classes of licensees, everyone within the same class must be treated alike. See Kislingbury vs. Plainfield, 10 N.J.Misc. 798 (C. P. 1932); Meehan vs. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906) Aff'd 75 N.J.L. 557 (E. and A. 1907). In the Meehan case, Mr. Justice Fort, speaking for the Supreme Court, said:

"It is not our intention, of course, to affirm that, under the police power, notwithstanding the fourteenth amendment, the state may, by arbitrary, fanciful or illusory action, discriminate between citizens holding licenses. After the license is granted, all who are similarly situated are entitled to equal privileges as licensees. Class legislation, whether within or without the police power, discriminating against some and favoring others, is prohibited, but legislation carrying out a public purpose, although limited in its application, if, within the sphere of its operation, it affects alike all persons similarly situated, is not interdicted by the fourteenth amendment. See Hing v. Crowley, 113 U. S. 703; Barbier v. Connolly, Id. 27, 32; Hayes v. Missouri, 120 Id. 68; Jones v. Brim, 165 Id. 180."

It is the ruling of this Department that a regulation by a municipality which prohibits certain retailers from doing business on Sunday, while authorizing other retailers of the same class to do business on Sunday, is invalid.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

By:

Nathan L. Jacobs  
Counsel-in-Chief

## #8 ALCOHOLIC BEVERAGES - ALLEGED GIFTS - SERVICE WITH FOOD BY UNLICENSED RESTAURANT.

March 21, 1934

George D. Rothermel, Esq.,  
West Jersey Trust Building,  
Camden, N.J.

Dear Sir:

Acknowledgment is made of your letter inquiring whether an unlicensed restaurant may, without imposing any additional charge therefor, serve alcoholic beverages with sandwiches or other food.

Section 1 (v) defines the sale of alcoholic beverages as every delivery of an alcoholic beverage "otherwise than by purely gratuitous title", etc. The alcoholic beverages served with the food cannot be said to have been furnished purely gratuitously since they are included in the price paid for the food. Consequently, a restaurant will be obliged to obtain a retail license before it can serve alcoholic beverages with food, even though no additional charge is made for the alcoholic beverage.

A copy of Bulletin No. 14, which contains several pertinent rulings is enclosed.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

By: Nathan L. Jacobs,  
Counsel-in-Chief

## #9 LICENSES - RETAIL DISTRIBUTION - SAMPLES NOT TO BE CONSUMED ON PREMISES.

March 19, 1934

Mr. Morris N. Scharf,  
88 East Main Street,  
Ramsey, N. J.

Dear Sir:

Acknowledgment is hereby made of your letter of March 13th.

A retail distribution license authorizes the holder thereof to sell for consumption off the licensed premises. It does not permit any sales of alcoholic beverages for consumption on the licensed premises. Section 1 (v) defines the sale of alcoholic beverages as every delivery of an alcoholic beverage "otherwise than by purely gratuitous title", etc. Samples furnished for consumption on the premises to prospective customers cannot be said to have been furnished purely gratuitously since they are incidental to the ultimate sale. Accordingly, the holder of a retail distribution license may not furnish such samples for consumption on the licensed premises.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

By: Nathan L. Jacobs,  
Counsel-in-Chief

#10

GIFTS BY LICENSEE OF PRETZELS OR FREE LUNCHES.

March 24, 1934.

Alexander Milne, Mayor,  
North Plainfield, N. J.

Dear Sir:

Acknowledgment is hereby made of your letter.

There is nothing in the Control Act nor in the regulations of this Department which prohibits a licensee from giving away pretzels or free lunches.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner