

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N.J.

BULLETIN NUMBER 15.

February 13, 1934

#1 A Borough Clerk wrote to the Commissioner as follows:

"On Dec. 19-1933 Council by Resolution granted a Plenary Retail Distribution License to *****. The fee did not accompany the application and the license has not been turned over to Mr. ****. He now wants to take out the license but thinks he should pay only the pro-rated amount from the time he receives the license. Council claims that as the license was granted on Dec. 19-1933 the fee of \$105.75 should be paid from the time granted.

"We would like your decision on this matter."

The Commissioner replied:

"The Borough Council is right. It should not have accepted the application at all unless it was accompanied by the proper fee. The Statute expressly so provides. The wisdom of the Statute is exemplified by the present controversy. In the absence of such statutory provision the applicant could gamble on the issuance of a license - if not granted, the municipality would do all the work but could not collect its investigation fee.

"In the present instance it did grant it but the applicant wants to pay only from the time he received the license. You cannot sue him. All you can do is to withhold delivery of the license until he pays the fee which he should have paid on December 19th. Hereafter accept no applications whatsoever unless accompanied by the full pro-rated fee."

#2 Distinction between Wholesaler and Retailer.

The Commissioner ruled: "There is nothing in the Act which limits a plenary wholesale licensee to sell in case lots. He may sell a single quart, in fact a two ounce nip, provided he sells only to a retailer. It is not the quantity of the sale but rather whether it is sold for the purpose of resale which distinguishes a wholesaler from a retailer."

#3

February 12, 1934

"LAW ENFORCEMENT - DUTIES OF OFFICIALS,
POLICE AND OTHER LAW ENFORCING AGENCIES"

Howard Eastwood, Prosecutor of the Pleas of Burlington County, wrote D. Frederick Burnett, Commissioner:

"I am receiving numerous complaints from several of the municipalities of the County to the effect that liquor is being illegally sold by numerous places in their community.

"Will you let me know what your Department intends to do toward investigating and prosecuting these violators, and if you desire us to cooperate with you in any way."

The Commissioner replied:

"I welcome your inquiry as to cooperation. The Control Act expressly provides that the primary duty of enforcement is upon municipal officials themselves. That means that they are to investigate, patrol and prosecute. As to prosecution, their duty is to take the initiative by laying before you all the facts of any violations so that you may do whatever is necessary. You, of course, as Prosecutor of the Pleas, are subject to the general underlying duty and have commensurate power on your own motion to see to it that the alcoholic beverage law, like every other law, is fully and effectively enforced.

"The function of this Department is to cooperate with you, with municipal officials, with the police and with every other law enforcing agency in the State in every reasonably necessary way. I am also charged with the duty to see that the beverage law is enforced. We purpose to do this at all times.

"I will appreciate if you will promptly advise me of any default by municipal officials, or by the police or by any other law enforcing agency which is derelict in duty, and in respect to all cases in which you desire the cooperation of this Department."

#4

February 12, 1934

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

Dear Sir:

I have your letter reading:

"This is a very small Borough. We have only one license at present issued. We would like to know if it is absolutely necessary to have an engraved one for the permanent issue."

Rules concerning permanent licenses (Bulletin 12, item 6) require (rule 5) that the Issuing Authority is to cause the license forms to be printed respectively in bound books similar to a check book or stock certificate book. There are also certain requirements for the stub.

The reason behind the rule was in order to facilitate subsequent audit by the State Commissioner of Municipal Accounts. It is far from my desire to inflict any unnecessary expense upon any municipality. In the case of municipalities such as yours which issue but a very few licenses, the expense of printing special books may be entirely disproportionate to the gain made from the auditing standpoint. That is more properly a matter for Walter R. Darby, Commissioner of Municipal Accounts, to decide. I will at once write him to ascertain his views and will communicate with you later.

Very truly yours,

D. Frederick Burnett
Commissioner.

#5 The following inquiry was received from a Municipal Attorney:

"I would like to have a construction of one of your bulletins,--the one in which you refer to crimes involving moral turpitude and then give a series of illustrations, such as, 'assaults,' 'rape,' etc. The question is what you mean by 'assaults.' Do you mean assaults which are comparable to rape, or do you mean merely the technical assault including assault and battery?"

The Commissioner replied:

"As regards turpitude: I know no open and shut distinction. The guiding principle which I employ is: Would conviction of such a crime be no more than an adjudication that I had violated some rule or done something which was forbidden, or would it really make me feel ashamed? I confess that I would not be ashamed of being convicted of driving my automobile at 70 miles an hour. So if convicted of transporting a quart of liquor to the golf club. So of an assault where I jumped in to protect a friend and the jury held that I had no right to do so. Everything depends on the facts. The facts are to be analyzed to see if devoid of hypocrisy, fanaticism, and hard-shell prejudice, one should or should not feel a sense of shame because of the act for which he was convicted. Driving an automobile on an ice-covered street at 15 miles an hour would give me a grave sense of shame if the wheels slipped and, because I drove too close to a schoolboy, crushed his leg. So a hit and run driver although his speed is well within the legal limit. So a man so drunk at the wheel as to show a wanton disregard of life and limb. So conviction on repeated occasions of violation of the liquor law which makes a man a nuisance to the community. It is far from technical. It is not a matter of black and white. Most of it is in the domain of the gray. You will have to use your common sense.

#6

February 14, 1934

Where the City of Garfield created a local excise board in December, 1933, followed on January 1, 1934, by a change in the political control of the municipal government and a resolution rescinding creation of the local excise board and the appointments made thereto, inquiries were made by the attorneys of both sides of the controversy to the Commissioner as to the legal effect of such rescission.

The Commissioner ruled: "Your inquiry does not raise any presently litigious issues within the proper province of the Commissioner nor does it relate to a matter which is properly the subject of the State-wide rules and regulations being promulgated by this Department. Any answer to your inquiry by this Department would necessitate the giving of an advisory opinion on a matter directly and principally involving the internal governmental affairs of your particular municipality and only secondarily and incidentally concerning control of the liquor traffic or the enforcement of the Act. It is against the policy of this Department to issue such rulings."

In the case where the Common Council of the City of Plainfield delegated to the Mayor the authority in his judgment to suspend the operation of a license, question was raised: "Can the City Council of the City of Plainfield delegate to the Mayor the authority to suspend licenses pending a hearing to revoke said licenses by the Council?", the same reply was made.

D. FREDERICK BURNETT,
Commissioner