

Commissioner Burnett
Sent to Regular Mailing List

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street Newark, N. J.

BULLETIN NUMBER 118

May 6, 1936

1. GIFTS - A GIFT OF ANY ALCOHOLIC BEVERAGE BY ANY LICENSEE CONSTITUTES A SALE - SINCE BREWERIES MAY SELL ONLY TO LICENSED WHOLESALERS AND RETAILERS, THEY CANNOT MAKE GIFTS OF BEER TO POLITICAL OR OTHER ORGANIZATIONS EXCEPT THEY ARE LICENSED.

April 29, 1936.

Camden County Beverage Company,
Camden,
New Jersey.

Gentlemen:

Staff reports indicate that you furnished free four halves of beer to the Runnemede Democratic Club, the Club, however, buying the revenue stamps, for an affair held April 17th, at Runnemede.

I have to inform you that such contribution is illegal.

Section 1 (v) of the Control Act expressly declares that "the gratuitous delivery or gift of any alcoholic beverage by any licensee" constitutes a sale. The power of sale of your products, under your brewing license, Section 11 (1) b, is confined to licensed wholesalers and retailers.

The fault may be due to my own Ruling of June 11, 1934 to the effect that breweries might make bona fide donations to the Little Sisters of the Poor (Bulletin 37, Item 11). I was carried away in that case by the laudable motivation of an out and out gift to a charitable organization doing a splendid work, but the ruling was erroneous, nevertheless, because it lost sight of the express provisions of the statute above quoted. It was therefore expressly superseded by ruling of December 10, 1934, in Bulletin 55, Item 10.

Ever since, the later and correct ruling has been followed and applied. Thus in re Krueger Brewing Co., Bulletin 71, Item 7, permission was granted the brewing company to exhibit its merchandise and method of manufacture at an industrial exposition, provided that no part of the product was sold.

So in re Wolber, Bulletin 71, Item 8, it was ruled that alcoholic products may not be given away gratuitously by exhibitors at such expositions because such gifts, when made by a licensee constituted a sale.

So in re Lindabury, Bulletin 90, Item 5, it was ruled that a wholesale licensee who distributes tickets to consumers entitling them to receive alcoholic beverages without charge from retail licensees (who were in turn compensated by the wholesaler) is, in effect, making a gift to the ultimate consumer, which, for the reasons aforesaid, constitutes a prohibited sale.

So it was ruled in re Ballantine & Sons, Bulletin 109, Item 17, that the brewery could not lawfully sell dented cans to

its own employees, not only because every can so sold cost a licensed retailer a sale and perhaps a customer, but because brewers are confined by law to selling their products only to licensed wholesalers and retailers.

Henceforth, I must insist that you, and all other licensees to whom the rule applies, confine your sales, which include gratuitous deliveries and gifts, to licensed wholesalers and retailers. My men are being instructed to check all such transactions.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. REVOCATION PROCEEDINGS - SALE TO MINORS - LICENSE REVOKED
UPON EVIDENCE SECURED BY UNITED ACTION OF ENFORCEMENT AND
WELFARE AGENCIES.

April 29, 1936.

Garrett A. Storms, Borough Clerk,
Hillsdale, N. J.

Dear Mr. Storms:

I have staff report of the proceedings before your Borough Council against John Marchisio, of 322 Evergreen Street, holder of plenary retail consumption license C-5, for sale of alcoholic beverages to a girl twelve years of age.

The report states that after the licensee pleaded guilty, your Council, in order to determine its own action, heard the facts from Captain Zimmerman of the Hackensack City Detective Bureau, Miss Jean Sattenstein, a welfare worker of the Child Welfare Department of Bergen County, Inspector Edward Lurie, and Investigator Claude Paddock of this Department, substantially as follows:

"On March 18, 1936 Inspector Lurie was informed by Captain Zimmerman of the Hackensack City Detective Bureau that John Doe (name fictitious) had been arrested the day previous charged with the crime of 'carnal abuse' on Mary Roe (name fictitious), a minor of the age of 12 years.

"Accompanied by Investigator Paddock, Inspector Lurie and Captain Zimmerman interviewed the said Mary Roe at the Child Welfare Department of Bergen County, in the presence of Mrs. Fisher, Chief Clerk of the Juvenile and Domestic Relations Court. Said Mary Roe informed them that she had been served beer in the above licensed premises the night of March 16 when she was with said John Doe.

"Said Mary Roe was then taken by Welfare Worker, Miss Sattenstein, accompanied by Inspector Lurie, Investigator Paddock, and Captain Zimmerman, to the licensed premises. Investigator Paddock and the girl entered and seated themselves in a booth; Marchisio, the licensee, asked for their order. Paddock ordered beer and asked the girl what she would have in the presence of Marchisio. She also ordered beer and both were served by the licensee.

"Inspector Lurie, Captain Zimmerman and Miss Sattenstein then entered and identified themselves. Marchisio readily admitted that he knew he should not serve to anyone under 21 years of age; that the girl did not appear to be over 14 or 15 years and knew he had made a mistake. He further admitted that he had served the same girl beer on the night of March 16th when she was accompanied by said John Doe; he stated that said John Doe's car had become stuck in the mud near the licensed premises and that he had driven said John Doe and the girl to a place where they could get a bus to Hackensack."

I note that despite a plea for leniency, your Council revoked the license effective immediately.

The prompt and high-class manner in which your Borough Council has performed its duty in this unpleasant case deserves the respect of every thinking citizen. Please also thank Captain Zimmerman and Miss Sattenstein for their splendid cooperation. The outcome illustrates neatly the gratifying results that can be attained by cooperative action of police and other law enforcement agencies with welfare organizations provided their action is backed up by virile penalties inflicted by a civic-conscious governing body.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. SPECIAL PERMITS - OPERATION OF INN AT HIGH POINT PARK -
CONSIDERATIONS APPLICABLE.

April 13, 1936.

Dear Commissioner Burnett:

Last season the Inn at High Point was operated by a concessionnaire named William Gierloff who was granted a temporary permit to dispense liquor for a six month period. The results of the sale of liquor and beer in the restaurant proved to be most satisfactory and orderly as we kept a constant check on this in order to determine whether or not it would be advisable to continue it.

The Commissioners this year are taking over the operation of all Park facilities including the Inn, known as the Cafeteria and Restaurant, which will be under the supervision of the Commissioners' personnel.

We would like to obtain the privilege of selling alcoholic beverages this season and would greatly appreciate it if you would kindly advise us what proceeding is necessary to obtain this permit.

Very sincerely yours,

HIGH POINT PARK COMMISSION
By: John J. Gibbons,
Executive Secretary.

April 30, 1936.

Commissioners of High Point Park,
Sussex, New Jersey.

Gentlemen: Att: John J. Gibbons, Executive Secretary

I have yours of April 13th.

Such application presents the unusual situation of one State Department licensing a State Commission. However, Section 2 of the Control Act provides that it shall be unlawful to sell alcoholic beverages in this State except pursuant to license or otherwise authorized. Section 75 provides that in cases where it would be appropriate and consonant with the spirit of the Act to issue a license, but the contingency has not been expressly provided for, the Commissioner may issue temporary permits. Since High Point Park is State owned property, local licensing authorities have no power to grant a license to sell alcoholic beverages in the Park. Accordingly, if a license may be issued at all, it must be done by the State Commissioner. Section 39 of the Control Act provides that no sales of alcoholic beverages shall be made in any public buildings owned or controlled by the State except as permitted by the State Commissioner.

It was under authority of these sections that Mr. Gierloff obtained his Special Permit last year.

I rule that your Board of Commissioners may apply for a Special Permit. In view of your assurances that the Inn will be under your direct supervision and kept orderly and in control at all times, I consent to such use of the Inn pursuant to Section 39. The permit will be issued under the same conditions, limitations and restrictions as apply to all Plenary Retail Consumption Licenses. The seasonal fee will be \$100.00 and will contain the usual restrictions against sales or service of alcoholic beverages at counters or at fountains at which ice cream, soft drinks or other refreshments are served and to persons under the age of 21 years. Application should be made in affidavit form requesting the Commissioner to issue a Special Permit setting forth the following information:

1. Name and address of the applicant.
2. Names and addresses of all members of the Board of Commissioners.
3. State fully and completely the nature of the place for which the permit is sought including a description of the building or buildings in which alcoholic beverages are to be sold.
4. State the period of time for which the applicant desires the permit.
5. State to whom the proceeds from the sale of alcoholic beverages will go.
6. State the kinds of alcoholic beverages to be dispensed.
7. State fully to whom sales of alcoholic beverages will be made.
8. State the manner in which alcoholic beverages will be sold and served and where consumption thereof will be

9. State any other facts pertinent to the issuance of such permit.

Accompany the application with:

1. An application fee of \$100.00 in certified check, money order or cash.
2. Federal Tax Stamp or evidence thereof to permit the retailing of alcoholic beverages.

It will be necessary to submit tax reports as required by the State Tax Department, Beverage Tax Division, and abide by all federal requirements.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. SPECIAL PERMITS - ISSUABLE ONLY FOR SPECIAL OR OCCASIONAL AFFAIRS AND NOT WHEN TANTAMOUNT TO A REGULAR LICENSE.

April 24, 1936.

Dear Commissioner Burnett:

I am interested in determining whether or not special permits would not be granted for the sale of beer where sales are to take place only once a week. These affairs are run by a church and will extend only for a period of ten or fifteen consecutive weeks. The church, of course, will pay the regular fee for such a license as granted to persons conducting picnics, etc.

Yours very truly,

ELMER E. BROWN

April 30, 1936.

Elmer E. Brown, Esq.,
Carteret, New Jersey.

Dear Sir:

I have your letter of April 24th inquiring as to whether Special Permits will be granted for the sale of beer at affairs to be conducted weekly by a Church for a period of ten or fifteen consecutive weeks.

I appreciate the purpose of your request and personally would like very much to accommodate this Church. However, I cannot see my way clear to issue a series of such permits for a period of ten or fifteen weeks.

Section 75 of the Control Act confers upon the Commissioner the power to issue temporary permits in contingencies not expressly provided for by the Act, but where it would be appropriate and consonant with the spirit of the Act to issue a license. In

such cases the Commissioner may, for special cause shown, issue a temporary permit for the sale of alcoholic beverages during a limited time.

I have gone a long way in the granting of Special Permits for isolated occasions, but to grant permits over a protracted period for a series of affairs, would amount to the issuance of a new form of license. The Legislature has not seen fit to provide for this situation on a general wholesale basis.

In Bulletin 30, item 4, a copy of which is enclosed, I denied a Special Permit for a bazaar-frolic to be held over a period of a week by the Jewish Community Center, Jersey City. In this case I pointed out that a permit which continues for a whole week may well raise the question as to whether it is fair to the licensees who pay the full license fee to grant such a permit, in effect, would be the granting of a Plenary Retail Consumption License. Likewise, in the instant case, it would be just as unfair to the licensees to issue a series of permits for a period of ten or fifteen weeks. The purpose of this Special Permit is to provide for the contingency where an organization desires to dispense alcoholic beverages at an occasional affair. To issue permits weekly for several months would be virtually the issuance of a Seasonal License.

In view of these considerations, I believe you will agree that fair discretion demands that I deny applications for a series of permits. However, I will gladly entertain applications for Special Permits for occasional affairs to be conducted by this Church.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. RETAIL LICENSEES - WAREHOUSES - NO AUTHORITY IN RETAIL LICENSEE TO MAINTAIN WAREHOUSE.

My dear Commissioner:

The above licensee occupies premises located at #257 McKinley Ave., East Orange. Adjacent to his liquor store at #44 So. Harrison St., East Orange, he operates a cigar and stationery store and has done so for the past several years; he enjoys a good reputation as a business man and is a respected citizen.

Mr. Kabacoff has requested this Board to grant him permission to permanently store in an adjacent store at #253 McKinley Ave., East Orange, floor space 11x35 (385 sq. ft.), malt beverages only, such as bottled and canned beers and ales in cartons. Under no circumstances will this space be used for the storing of spirituous liquors.

Such an arrangement as this no doubt comes under the category of warehousing, and since the Act provides only for public warehousing and we can find nothing in your rulings for

our guidance, may we respectfully request your instructions as to procedure.

Very truly yours,

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE
CONTROL

J. L. BOCK,
Sec'y.

April 27, 1936.

Mr. Jacob L. Bock, Secretary,
Municipal Board of Alcoholic Beverage Control,
East Orange, N. J.

Dear Mr. Bock:

Section 2 of the Alcoholic Beverage Control Act provides that it shall be unlawful to warehouse alcoholic beverages in this State, except pursuant to and within the terms of a license. Section 13 (3) a, which provides for the Plenary Retail Distribution License declares that the holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption off the licensed premises. No reference is made to the warehousing or storage of alcoholic beverages. In Bulletin #24, item #10, (Re Licenses-Chain Stores - Transportation and Warehouses) the Commissioner ruled that the holder of a retail license has no authority to maintain a warehouse and, consequently, it may not lawfully store its alcoholic beverages in its warehouse and deliver such beverages from time to time to its respective stores.

Therefore, Mr. Kabacoff may not obtain a license for the storing or warehousing of alcoholic beverages at 253 McKinley Avenue, East Orange.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Erwin B. Hock,
Deputy Commissioner

6. MUNICIPAL ORDINANCES - HOURS OF SALE - THE PRIMARY RESPONSIBILITY IN FIXING HOURS OF SALE IS ON THE MUNICIPAL GOVERNING BODY.

MUNICIPAL ORDINANCES - AMENDMENTS - RIGHT OF MUNICIPAL GOVERNING BODY TO AMEND AND PRINCIPLES APPLICABLE.

April 30, 1936.

Ashton Lamson, Chairman
Bass River Township Committee,
New Gretna, New Jersey.

Dear Mr. Lamson:

I have your letter of April 25th and the copy of the resolution concerning alcoholic beverages which was adopted by the

Township Committee on December 30, 1933. I do not yet have from the Clerk a certified copy of the resolution adopted April 21, 1936 fixing the hours of Sunday sales. I shall write to him for it.

Neither the State Alcoholic Beverage Control Act nor the rules and regulations of this Department prescribes the hours during which alcoholic beverages may be sold and licensed premises may be open. The problem is one which the local municipal authorities in the first instance must decide. The statute, Section 37, confers upon the governing body of each municipality the power to limit within its municipality, either by resolution or by ordinance, the hours between which sales of alcoholic beverages at retail may be made. It places the primary responsibility upon the members of the local governing body and rightfully so as they, being in a position to know fully the local situation, are better able to tell just exactly what hours the people in the community want.

There is nothing to prevent the Township Committee from amending their regulation regarding hours of sale at any time. Such amendment need not wait until the end of the fiscal year. The original regulation did not bind the Township Committee so as to prevent any future change. At the time it was adopted, it represented merely what the Committee then supposed to be the best common interest of the public at large. Now, if experience has shown to the contrary, it may be amended or rescinded outright for the right to change is founded on the same power which vested in the Township Committee the right to enact it in the first place. Re Sierszputowski, Bulletin 52, item 4, re Joseph, Bulletin 46, item 6, re Drew, Bulletin 44, item 13, copies enclosed.

So far as the amendment would limit the hours of sale, it would not, for the reasons given in Bulletin 43, item 2, need my approval in the first instance in order to be effective. So far as it would fix the opening and closing hours, it would be approved ex parte if on its face it was reasonable and otherwise proper, the approval going merely to the extent of your legal power to adopt the regulation and not to the policy thereof which is a matter resting entirely in the Township Committee's judgment and discretion. Such an amendment, if made, must extend the permission to sell and remain open on Sundays to all members of the license classes to which it is intended to apply. It cannot be in the nature of a special dispensation given to a chosen few alone. And if the prohibition of Sunday sales theretofore adopted was expressly included as a condition in the licenses which have been issued, then upon the adoption of the amendment the licenses themselves should be changed accordingly.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. LICENSES - SPECIAL CONDITIONS - INCORPORATION OF PLUMBING ORDINANCE BY EXPRESS REFERENCE THERETO COMPLIES WITH REQUIREMENT OF DEFINITENESS.

Dear Sir:

Receipt is acknowledged of your letter of April 8th concerning Union Avenue Tavern Inc. Plenary Retail Consumption License.

It is noted you have taken exception to the resolution of the Governing Body under which the issuance of the license was authorized and we are of course sorry to have incurred your disapproval.

As a matter of fact the sanitary equipment deemed necessary to be installed to the satisfaction of the Plumbing Inspector is that specifically referred to in Section 21 of an ordinance of the Township of Union to regulate and control the construction, repair and replacement of plumbing, ventilation and drainage systems, public and private in the Township of Union, and the connection thereof with outside sewers or other receptacles, and establishing a plumbing code, etc., finally adopted April 11, 1933.

I suppose the thing to have done was to, as you say, incorporate in the resolution what equipment was deemed necessary, as set forth in the last paragraph of your letter, but as the ordinance referred to states just what is required and as our Plumbing Inspector, in conformity therewith, has already certified to the Township Committee such compliance on the part of the licensee with such requirements, I am wondering if you would not, in this instance, overlook the fact of our having failed to indicate in the resolution the specific requirements.

It is needless to say that the issuance of the license is always withheld until we have on file the Plumbing Inspector's written certification that the sanitary requirements have been met.

I am enclosing print of the ordinance referred to.

Very truly yours,

W. W. FRIBERGER
Township Clerk

April 30, 1936.

Wm. W. Friberger,
Township Clerk,
Union, New Jersey.

Dear Mr. Friberger:

I have yours of April 11th referring to mine of April 8th, (Bulletin 113, item 11) regarding the special condition imposed upon the Union Avenue Tavern, Inc. license; also, the amendment to Section 21 of your Plumbing ordinance adopted April 11, 1933.

I note that the ordinance does provide for the sanitary facilities required in premises of the nature of restaurants, taverns and cafes and hence, would apply to the tavern premises in question. In fact, it would control regardless of whether or not an alcoholic beverage license were issued subject to that express condition. If this is what the special condition means, I will be glad to comply with your request to overlook in this case the failure to indicate the specific requirements. I therefore approve herewith.

Hereafter, I suggest that such special conditions read: "Subject, however, to written certification by the Plumbing Inspector that the requirements of the Township plumbing ordinances

have been fully complied with." Then the applicant may ascertain by referring to the plumbing ordinance just exactly what installation he is required to make and the Plumbing Inspector would be expressly given a standard against which to measure compliance. While such a condition would not have the directness and hence the facility of administration that a condition setting forth the specific items of equipment required to be installed would have, it would by reference to the ordinance set forth unequivocally the Township Committee's demands.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

8. APPEALS - SUSPENSIONS - STAY OF SUSPENSION PENDING APPEAL.

John Ziomek,)	
Appellant,)	
-vs-)	On Appeal
Township Committee of)	<u>ORDER</u>
Haddon Township,)	
Respondent.)	

This matter having come on for hearing in the presence of Frank M. Lario, Esq., Attorney for appellant, and Mark Marritz, Esq., Attorney for respondent, pursuant to notice duly served on the parties, and it appearing that on April 29, 1936 respondent suspended appellant's license #C-3, effective from May 3, 1936, at 2:30 A. M. to May 9, 1936, at 2:30 A. M., inclusive, for having allegedly sold beer, in violation of a municipal ordinance, to Clifford Whitcraft while said Clifford Whitcraft was intoxicated, and testimony having been introduced on behalf of appellant to the effect that said Clifford Whitcraft was not intoxicated when he purchased the beer from appellant, and no evidence having been presented to the Commissioner by respondent to the contrary; and it further appearing that a denial of appellant's application for a stay of the suspension pending appeal would render his appeal futile,

It is, on this 2d day of May, 1936,

ORDERED that the order entered by respondent on the 29th day of April, 1936, suspending appellant's license #C-3 effective from May 3, 1936, at 2:30 A. M. to May 9, 1936, at 2:30 A. M. inclusive, be and the same hereby is stayed pending determination of the appeal filed herein.

D. FREDERICK BURNETT
Commissioner

BY: NATHAN L. JACOBS
Chief Deputy Commissioner.

9. RETAIL LICENSES - EXPIRING JUNE 30, 1936 - INSTRUCTIONS.

May 4, 1936.

N O T I C E

RETAIL LICENSES EXPIRING JUNE 30, 1936 --- INSTRUCTIONS.

All licenses, except Seasonal Retail Consumption licenses, will expire at midnight, June 30, 1936. Licensees must obtain their renewal licenses on or before that date in order to continue business without interruption. Unless the State Legislature enacts some unforeseen provision or provisions in the Control Act, the present forms of application will be used for all retail licenses for the next fiscal year.

Applications should be filed promptly in order that all licensees obtain their renewal licenses by July 1, 1936. A day's delay may mean that some licensee will have to close up shop.

A licensee who seeks to renew must comply with all requirements pertaining to his original application. Accordingly, he must (1) file a new application accompanied by a full annual license fee for the period from July 1, 1936 to July 1, 1937 and satisfactory evidence that a new Federal tax stamp has been obtained, and (2) publish a notice of intention once a week for two weeks successively. This is only the mechanical part of the procedure. In addition, investigation must be made by the municipal issuing authorities and hearing held, if necessary. This will require time.

Following are the prescribed forms of applications:

- | | |
|--|--|
| (1) PLENARY RETAIL CONSUMPTION LICENSE | } Use form in Bulletin 72, item 3, except change expiration date to June 30, 1937. |
| PLENARY RETAIL DISTRIBUTION LICENSE | |
| SEASONAL RETAIL CONSUMPTION LICENSE | |
- (2) CLUB LICENSE: Use form in Bulletin 72, item 4, except change expiration date to June 30, 1937.

Applicants should note particularly the following rules:

(1) RULES APPLICABLE TO ALL MUNICIPAL RETAIL LICENSES FOR ADVERTISING "NOTICE OF INTENTION" TO APPLY FOR A LICENSE. Note particularly that application must be filed at or before the first insertion of the Notice of Intention and that a hearing is to be set when an objection is filed without the necessity of any request therefor by the applicant.

(2) RULES GOVERNING THE EMPLOYMENT BY LICENSEES OR PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE OR CITIZENSHIP. Note particularly that all licensees must apply directly to the State Commissioner for permission to employ persons coming within these rules. Violation will subject the licensee to revocation of his license.

(3) RULES GOVERNING THE ISSUANCE OF TRANSPORTATION

INSIGNIA. Concurrently with the expiration of all municipal retail licenses (except Seasonal Retail Consumption), all transportation insignia likewise will expire. New transportation insignia must be obtained by all licensees (including Seasonal Retail Consumption licensees) who intend to transport alcoholic beverages in connection with their respective businesses. No insignia will be issued until the issuance of the license has been certified to the State Department. Only vehicles operated under commercial motor vehicle licenses are eligible to receive insignia and such vehicles must be either owned or leased by the applicant. If leased, certified copy of the lease must accompany the application. The initial insignia is furnished free of charge. All additional insignia are charged Two Dollars (\$2.00) each. Application therefor must be made direct to this Department, accompanied by cash, money order or certified check drawn to the order of D. FREDERICK BURNETT, Commissioner. Application forms for Transportation Insignia, Form 102, will be forwarded to all issuing authorities immediately to be distributed to the licensees requiring the same. These applications also must be executed forthwith and forwarded to this Department, 744 Broad Street, Newark, New Jersey, in order to operate thereunder after June 30th.

Licensees who fail to obtain their renewal licenses on or prior to June 30, 1936 will not be permitted to operate until all legal requisites have been completed and licenses actually issued.

THE LAW WILL BE ENFORCED.

D. FREDERICK BURNETT
Commissioner

10. MORAL TURPITUDE - ROBBERY IS CRIME INVOLVING MORAL TURPITUDE - RECORD OF CONVICTION FOR ROBBERY IS CONCLUSIVE AND SURROUNDING CIRCUMSTANCES MAY NOT BE CONSIDERED.

April 24, 1936.

R. Lewis Kennedy, Esq.,
Bayonne, N. J.

Dear Sir:

I have considered your letter of April 20th and previous correspondence.

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. See Bulletin #17, Item #2. There can hardly be any doubt that robbery is a crime involving moral turpitude. See Bulletin #78, Item #13. Conviction therefor disqualifies the person convicted from holding a license under the Control Act or from being employed by a licensee. Under the statute this disqualification is absolute and is not subject to waiver by the Commissioner, even temporarily.

Your letters raise the further question as to whether the Commissioner is at liberty to examine into the facts resulting in the conviction for robbery for the purpose of determining

whether the crime involved moral turpitude. Certain crimes may or may not involve moral turpitude, depending upon the surrounding circumstances. Where such crimes are involved, authority is clearly present to look beyond the record of conviction. See Rudolph vs. United States, 6 F (2d) 487 (App. D.C. 1925), where the Court said:

"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."

However, certain crimes, such as murder, robbery, burglary, etc. must necessarily involve moral turpitude. As to these, the record of conviction is conclusive and the surrounding circumstances may not be examined. See Portada vs. Day, 16 F. (2d) 328 (D.C.N.Y. 1926); United States vs. Day, 54 F. (2d) 336 (C.C.A. 2d 1931); United States vs. Corsi, 63 F. (2d) 757 (C.C.A. 2d 1933).

The Commissioner has ruled that in view of his conviction for robbery your client may not, under any circumstances, hold a license or be employed by a licensee.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

11. APPEALS - WHERE MUNICIPAL ISSUING AUTHORITY HAS HAD REASONABLE OPPORTUNITY TO REACH DETERMINATION BUT HAS FAILED TO DO SO DESPITE WRITTEN REQUEST FROM APPLICANT, APPEAL MAY BE TAKEN AS THOUGH DECISION ADVERSE TO APPLICANT HAD BEEN RENDERED.

May 1, 1936.

Paul M. Salsburg, Esq.,
Atlantic City, N. J.

Dear Sir:

After the filing of an application for the issuance or transfer of license, the municipal issuing authority must be afforded reasonable opportunity to act thereon. Where objection to the granting of the application is filed and hearing is held pursuant to the Commissioner's rules, the municipal issuing authority may reserve decision and defer final action for a reasonable period of time pending its further deliberations. When the municipal issuing authority has had reasonable opportunity to reach a determination, the applicant may address to it a written communication, requesting that the application be granted or denied within a designated period therein set forth in order that an appeal may be taken in the event the decision is adverse. Under these circumstances the issuing authority will, in the absence of exceptional considerations warranting further delay, reach a determination.

However, if no determination is reached and no exceptional circumstances warranting further delay appear, the applicant

may treat the situation as though an adverse determination had been made and file an appeal with the Commissioner. On such appeal, if it appears to the Commissioner that the municipal issuing authority's failure to reach a determination was unwarranted, the case will be determined on its merits as though an adverse decision had been rendered against the applicant. If, however, it appears that the municipal issuing authority's delay was not unwarranted, the matter will be remanded for determination.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

12. LICENSE FEES - MUST BE UNIFORM WITH RESPECT TO EACH CLASS OF
LICENSE THROUGHOUT ENTIRE MUNICIPALITY.

Dear Sir:

The question was raised at the regular council meeting of the Borough of Manville, last Tuesday night, March 24th, as to whether or not the Borough can have more than one fee for the same type of license, for example:

A Plenary Retail Consumption license issued to persons or concerns on North and South Main Street in the Borough of Manville for a fee of \$365, and a Plenary Retail Consumption License issued to any tavern located twelve or more blocks from North and South Main Street for a fee of \$200.

Will you please let me know if the same would be legal?

Very truly yours,

MILTON WEISS
Borough Attorney

May 4, 1936.

Milton A. Weiss, Esq.,
Somerville, N. J.

Dear Sir:

Re: Borough of Manville

The Borough Council cannot fix more than one fee for plenary retail consumption licenses or, for that matter, for any particular class of license. The Control Act, Section 13, contemplates that only one fee shall be fixed for each of the five classes of retail licenses municipalities are authorized to issue.

Each class of license confers certain privileges. Each member of a particular license class is entitled to all of these privileges. You cannot charge one licensee more and another less for the same kind of a license. Getting away from Main Street makes no difference.

Very truly yours,
D. FREDERICK BURNETT

13. MUNICIPAL ORDINANCES -DISCRIMINATION - REGULATIONS FIXING CLOSING HOURS MUST APPLY EQUALLY TO ALL MEMBERS OF THE SAME LICENSE CLASS.

MUNICIPAL ORDINANCES - CLOSING HOURS - MUST BE UNIFORM THROUGHOUT ENTIRE MUNICIPALITY.

Dear Sir:

I represent a retail liquor dealer in a municipality of about 2500 population spread over a large area. Six retail liquor licenses have been granted in this area. Four of the licensees conduct their taverns in the thickly settled area of the town, whereas two of the licensees are on a state highway on the very edge of the town in a rural section. The closing hours for taverns in this municipality is 1:00 A.M. by municipal ordinance. It is conceded that the four taverns in the middle of the town should close at 1:00 A.M. Inasmuch as the two taverns in the rural section of the town appeal mostly to travelers, particularly in the summer months, it is proposed to allow these two taverns to remain open to 3:00 A.M.

Has your department issued any ruling which forbids discrimination among licensees as to closing hours? In the event that such a practice is not consistent with your rules and regulations, would a classification of the taverns to be closed at 1:00 A. M. on the basis of population per square mile meet with the approval of your department? For example, an ordinance reading that all licensees whose place of business is situated in a part of the borough where the population exceeds 100 persons per square mile or using some other suitable yardstick.

I shall appreciate your advice on this problem.

Very truly yours,

EARLE J. HARRINGTON

May 4, 1936.

Earle J. Harrington, Esq.,
Matawan, New Jersey.

Dear Sir:

In re Wenzel, Bulletin 19, item 7, a regulation by a municipality which prohibited certain retailers from doing business on Sunday, while authorizing other retailers of the same class to do so, was held invalid.

In re Sierszputowski, Bulletin 52, item 4, tentative approval in advance of enactment of an ordinance permitting sales during certain hours on Sundays was made on condition that the permission was granted to all licensees.

In re Holz, Bulletin 117, item 8, I held that regulations extending the local closing hours, must confer the privilege generally upon all licensees and not upon some particular licensees.

Discrimination as to closing hours against some licensees and favoring others is not permissible.

Your next inquiry is as to the validity of making a classification of taverns for the purpose of fixing closing hours on the basis of population.

In re Strathmere, Bulletin 40, item 5, I held that "the issuing authority has no power arbitrarily to divide a municipality and grant the privilege of Sunday selling to one part and exclude the other. Neither has the Commissioner."

So, in Brighton Hotel Company vs. Loder, Bulletin 41, item 6, I held that the issuing authority had no power to subdivide a municipality and grant license privileges to applicants in one ward and exclude applicants of another; that mere ward lines afforded no basis for classification.

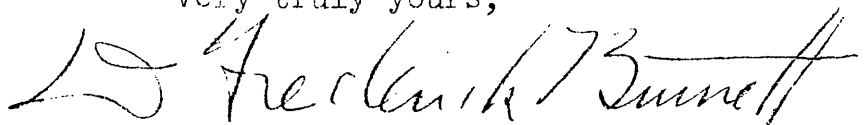
In re Marlboro, Bulletin 61, item 3, a resolution fixing a closing hour was disapproved because it applied only to a portion of the Township known as the Village.

So, in the matter of publication of notices of intention, Bulletin 76, Item 4, the requirement that the newspaper must be published and circulated in the "municipality in which the licensed premises are located" was held to mean the entire City, Township, Borough or other municipality and that unofficial subdivisions thereof are not cognizable in law.

In re Disbrow, Bulletin 109, item 7, I held that a proposed referendum must apply to the entire municipality and not only to separate districts therein.

Irrespective of the effect of density of population upon reasonable hours of traffic in taverns and without inquiry whether a closing hour based on population is arbitrary or illusory, I hold that, in the absence of any provision in the Control Act for zoning different parts of the same municipality, there is no authority to subdivide licensees of the same class in the same municipality and fix different closing hours. The Act (Section 37) by permitting each municipality, as a matter of sound home rule, to fix its own closing hours "as regards said municipality", contemplated that the hours so fixed were to be uniform throughout that community without discrimination or dispensation. Home rule does not mean ward rule. Each municipality is an indivisible unit so far as closing hours are concerned.

Very truly yours,



D. Frederick Burnett
Commissioner

New Jersey State