

COMMISSIONER BURNETT  
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 79

June 18, 1935

1. SOLICITORS' PERMITS - MUST BE PROCURED BEFORE JULY 1, 1935 BUT NOT UNTIL THEN - EMPLOYERS OF SALESMEN MUST HAVE NEW JERSEY LICENSE IN ORDER TO GET SOLICITORS' PERMITS

June 10, 1935

Mr. Samuel O. Wynne,  
c/o Continental Distilling Corporation,  
Philadelphia, Pa.

Dear Sir:-

I have your telegram reading:

"Continental Distilling Corporation now selling only to wholesalers and rectifiers holding New Jersey State licenses stop all orders are accepted this office and sales made here stop is it necessary for us to have New Jersey license in order for salesmen to call on licensees in New Jersey and take orders."

Senate Bill 291, today signed by Governor Hoffman and effective immediately, provides, 1, "No individual shall offer for sale or solicit any order in the State for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without this State, unless such person shall have a solicitor's permit issued by the commissioner hereunder"; 2, "The commissioner is empowered to issue, subject to rules and regulations, solicitor's permits which shall set forth such facts as may be prescribed by the commissioner"; 3, "Any person who violates any provisions of this act shall be guilty of a misdemeanor and punished by", etc.

It will, therefore, be necessary for the Commissioner to make and promulgate appropriate rules and regulations and to issue the permits and provide the form of application therefor. Since this necessarily takes time and there are but twenty days left of the current fiscal year, and the law was not designed as a revenue but as a control measure, and as no specific time was set for the initial issuance of such permits, I construe the intent of the Legislature to be that, while the supplement was to be effective immediately so that the Commissioner could make and promulgate the rules and regulations and make all the necessary provisions for the issuance of solicitors' permits, there was no intention to effect an hiatus or to stop all activities by salesmen until the necessary mechanics could be set up. It wouldn't be right to make a salesman guilty of a misdemeanor for selling without a solicitor's permit when, due to the time factor, no one could obtain such permit if he tried.

Notice is therefore hereby given that the rules and regulations which will be promulgated shortly will provide that solicitors' permits are to be issued in respect to the period beginning July 1, 1935, and that until that time, solicitors' permits are not necessary.

I also purpose to incorporate in the rules and regulations a condition precedent to issuance of any solicitor's permit that the employer of the salesman must have a New Jersey license.

Otherwise, non-licensees, who contribute nothing to the State treasury but who operate in this State, as you do, by solicitation of orders herein, would be able to compete unfairly with New Jersey licensees. The objective of the supplement was not to discriminate against the State's own licensees and their salesmen, but to provide that every salesman operating in this State must be licensed and this irrespective of the fact that the orders solicited in New Jersey are technically accepted in a foreign state, so to give color to the claim that the sale negotiated in New Jersey is consummated in another state and hence unaffected by our law. But the supplement was drawn in anticipation of such contentions. Its prohibition is against the offering or solicitation in this State. It expressly provides that this is so "whether such sale is to be made within or without this State".

It follows that not only will your salesmen, who operate in New Jersey, have to take out a solicitor's permit but also that it will be necessary for your company itself to take out a New Jersey State license, but that it will not be necessary for you to do this until the period beginning July 1st next.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

DFB:G-

2. LICENSED PREMISES - SALES OUTSIDE THE BUILDING PROPER - HOW TO APPLY THE RULE

Dear Commissioner Burnett:

Beverages are dispensed on the first floor of our home under a retail license and last summer we had an outside garden in the front of the building, between the sidewalk and the building.

So as not to violate any of your rulings, pertaining to service, we are asking for your approval to again render service in front of the building. The garden is enclosed and a canopy over the top. The picket fence is only about four feet high along the front of the garden.

We are asking for your approval because of a ruling pertaining to outside service, recently rendered. At no time is service rendered on the sidewalk or at the curb.

Respectfully yours,  
OTTO T. BREUNICH, Secretary  
Legion Chateau Inc. Holding Company  
American Legion Belleville Post 105  
Belleville, N. J.

June 11, 1935

Mr. Otto T. Breunich,  
Belleville, N. J.

Dear Mr. Breunich:

I have yours of the 7th.

Herewith copy of the decision re Berkeley-Carteret Hotel, Bulletin 78, Item 10.

In applying that decision to your own case, do the following:

(1) See how your license describes the licensed premises. If merely as No. So-and-So Street and it does not contain any restriction that the bar shall be in or service be confined to any particular place on the licensed premises, well and good.

(2) Determine whether the place where you purpose to sell and serve is actually a part of the licensed premises.

(3) Ascertain whether there are any local municipal regulations which prohibit or in anywise restrict sales and service outside of the building. If there are, then those regulations must be scrupulously obeyed.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

DFB:G-

3. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - EXCEPTION IN FAVOR OF EXISTING LICENSEES

MUNICIPAL ORDINANCES - LICENSED PREMISES - CONSIDERATIONS APPLICABLE WHEN REQUIRED TO BE 500 FEET DISTANT FROM AN EXISTING PREMISES

MUNICIPAL ORDINANCES - LICENSED PREMISES - REQUIREMENT OF 400 SQUARE FEET - EXCEPTIONS IN FAVOR OF LICENSEES WHEN REGULATION SHOULD APPLY TO EVERYBODY IF ANYBODY ARE DISAPPROVED

MUNICIPAL ORDINANCES - PENALTIES - CONSIDERATIONS APPLICABLE

MUNICIPAL ORDINANCES - REQUIREMENT THAT HOLDER OF CONSUMPTION LICENSE MUST ACTUALLY BE IN CHARGE OF BUSINESS - APPROVED

MUNICIPAL ORDINANCES - PROHIBITION OF SPECIAL EVENTS SUCH AS "ALL THE BEER YOU CAN DRINK FOR ONE DOLLAR" - APPROVED

MUNICIPAL ORDINANCES - REQUIREMENT OF REGISTRATION WITH TOWNSHIP MANAGER OF ALL PERSONS EMPLOYED IN SALE OR SERVICE OF LIQUOR OR FOOD - APPROVED

June 10, 1935

Miss Clara Christiansen,  
Deputy Township Clerk,  
Teaneck, N. J.

Dear Madam:

I have before me for consideration the proposed ordinance No. 684 which was introduced and passed on first reading by the Township Council on May 27, 1935. It will be approved as submitted subject to the following comments and exceptions:

Section 5 insofar as it limits the number of plenary retail consumption licenses and Section 7 insofar as it limits the hours between which the sale of alcoholic beverages at retail may be made, for the reasons stated in Bulletin 43, item 2, do not need the Commissioner's approval in the first instance in order to be effective. Section 5 limits the number of plenary

retail consumption licenses to twenty, but makes an exception in favor of renewals of existing licenses. So far as it makes exception in favor of existing licensees, it is but fair, understanding, as I do, that it means that the licensees are themselves worthy and well qualified, and their establishments are proper, and their record is clean. It is, therefore, approved so far as the exception is concerned.

Section 7 prohibits the issuance of plenary retail consumption licenses within five hundred feet of any existing plenary retail consumption licensed premises. So far, so good. It then continues: That notwithstanding the prohibition such licenses may be granted, in the discretion of the Township Council, whenever the issuance will work a benefit to the public welfare, provided that the written consent of a majority of the plenary retail consumption licensees shall have been obtained and that a hearing shall have been held after five days notice to any plenary retail consumption licensee within five hundred feet of the premises sought to be licensed. The exception seems to nullify the operative language of the rule so that it practically amounts to saying "We do not think that consumption licenses should be closer to each other than five hundred feet but if the licensees themselves want it, we reserve the discretion to change our minds if we feel that the issuance of the license will be to the public welfare." There is no indication as to what circumstances would warrant classifying the issuance as for the public welfare. Hence, the section does not create a rule which can be applied fairly to all comers because of the vagueness and indefiniteness of the language employed. Nevertheless I shall tentatively approve Section 6 as an expression of your present intention or policy and leave to concrete situations which may arise in the future, its application. If anyone considers himself aggrieved thereby and makes an appeal therefrom he will receive, as with all other appeals, a full and sympathetic hearing. Exceptions of this kind are pregnant with danger and must be strictly applied and construed.

Section 11 prohibits the sale of alcoholic beverages for consumption on the licensed premises in any room to which the public is not freely admitted or in any bar-room containing less than four hundred square feet, providing, further, for an exception in favor of any premises already licensed. The operative parts of the two regulations are approved. The exceptions in favor of premises already licensed are disapproved. If your Council shall have determined that sound public policy requires that alcoholic beverages be sold for consumption on the licensed premises only in rooms to which the public is freely admitted and that all bar-rooms must have a minimum of four hundred square feet, I do not see how any exception in favor of existing licensees purporting to contradict that policy can be supported. My records show that such restrictions have been in effect in Teaneck since December 9, 1933, having been first adopted in the regulations of that date and subsequently re-enacted February first and June 26, 1934. How then could it happen that any such premises were licensed in derogation of your own restrictions now necessitating any exception? I have heretofore approved those regulations when they contained no exceptions. I now disapprove so far as any exception is attempted to be made.

Section 20 purports to penalize by fine of not more than Two Hundred Dollars any violation of the provisions of the ordinance and/or of the Act and/or of the regulations promulgated or to be promulgated by the State Commissioner. It is

approved insofar as it penalizes for violation of the ordinance. Said approval, however, cannot extend to penalties imposed for violations of the Act or the rules and regulations. Violations of the Act, as such, are made misdemeanors by the Act and hence are not within the jurisdiction of your local magistrates to adjudicate upon. Violations of the Commissioner's rules and regulations, as such, are not made subject to the penalty of fine. The incorporation by reference of the specific acts for violation of which it was intended that the fine be imposed, if such was your intention in referring to Act and the rules and regulations, is too indefinite, too inferential to support any penalties, for penalties are always strictly construed. If the act which is intended to be so penalized is set forth in full in the ordinance that is another matter. In such circumstances I believe the penalty could be supported.

Section 7 fixes the closing hour and then provides that the Township Council may by resolution extend the closing hour on special occasions. This may be done by resolution if specifically so provided in the ordinance. It is approved.

Section 8 provides "No more than one plenary retail consumption license shall be granted to one person." Section 37 of the Act allows each municipality to enact that no more than one retail license shall be granted to any person. The Township has availed itself of but a portion of the option. It is approved.

Section 9 requires that the holder of a consumption license must actually be in charge of the management and direction of the business conducted on the licensed premises. This is a far sighted and forward looking regulation which I believe will go far toward eliminating the practice of licensees masquerading under "fronts" and other devices deliberately evasive of the true intent and meaning of the Control Act. Questions will inevitably arise when this section is attempted to be applied to corporate licensees, but this can be worked out fairly when the situation actually arises and as experience shall teach. Your section is therefore approved as written.

Section 13 reads: "Special events of the character of 'all the beer you can drink for one dollar' shall be prohibited." This laudable regulation is heartily approved. All self-respecting licensees as well as all good citizens will welcome it.

Section 19 requires that the name and address of all persons to be employed in the sale or serving of liquor or food in any licensed premises be first registered with and approved by the Township Manager. This is approved as submitted.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12, and Bulletin 34, item 5.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

## 4. APPEALS - REHEARING - NEWLY DISCOVERED EVIDENCE

May 24, 1935

Jerome J. Dunn, Esq.,  
Ridgewood, N.J.

Dear Sir:           Re: William Tell Hotel Corporation vs. Board of  
Commissioners of the Village of Ridgewood

Your letter requesting a rehearing in the above entitled matter on the ground of newly discovered evidence has been considered.

Our courts have repeatedly held that upon an application for a new trial on the ground of newly discovered evidence it must appear that the evidence could not have been ascertained by reasonable diligence prior to the trial. See Murphy vs. Skelly, 101 N.J.Eq. 793 (E. & A. 1927); Bennett vs. Hinrichsen, 8 N.J. Misc. 131 (Sup. Ct. 1930), affirmed 107 L. 373 (E. & A. 1931). Furthermore, evidence which is merely corroborative or cumulative does not afford a basis for a new trial. See Hoban vs. Sandford, 64 N.J.L. 426 (Sup. Ct. 1900).

The nature and materiality of the newly discovered evidence and the reasonable diligence of the applicant must appear from affidavits or other satisfactory evidence. Cf. Nightengale vs. Public Service, 8 N.J. Misc. 238 (Sup. Ct. 1930). No affidavits are submitted in connection with the present application. The only indication of the nature of the newly discovered evidence is the statement in counsel's letter that it "will corroborate the fact that my client, and no one else, is the only party in interest". This issue was fully presented at the hearing and there was a determination directly thereon. Proper administration requires that, aside from exceptional cases where the clear interests of justice compel a contrary conclusion, determinations on appeal be final and not subject to redetermination. No such exceptional situation is here presented.

Accordingly, the Commissioner has denied the application.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

NLJ:OK

5. ALIENS - PERMISSIBLE TO EXTEND LICENSE TO AN ADMINISTRATOR  
ALTHOUGH AN ALIEN

LICENSES - EXTENSION - ALIEN ADMINISTRATOR

Dear Sir:

A party holding a retail consumption license in the City of Burlington died. Letters of administration have been taken out by a person not an American Citizen. The administrator has applied to the local issuing authority for permission to operate the licensed premises until June 30th, 1935.

Will you kindly advise me if the local issuing authority has the power to grant the request in the instant case.

Very truly yours,  
THOMAS D. BEGLEY,  
City Solicitor



ing, he may transport such alcoholic beverages without a license to a licensed warehouse for storage pending their ultimate disposition in accordance with law.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

NLJ:HOK

7. COURT DECISIONS - ESSEX COUNTY COMMON PLEAS - STATE VS. FIEGEN-BAUM

State of New Jersey, Complainant,	}	An Appeal from First Criminal Court of the City of Newark
-vs-		
Morris Fiegenbaum, Defendant.	}	

State of New Jersey, Complainant,	}	O p i n i o n
-vs-		
Frank Tygar, Defendant.	}	

For the State appears A. William Caruso, Legal Assistant to the Prosecutor of the Pleas.

For the defendants appears Charles Hendler.

Jerome B. McKenna appears amicus curiae.

BRENNAN, J.

This is a review of the conviction of the defendants had before the First Criminal Court of the City of Newark, on the 25th of January, 1935, upon complaints charging violation of Section 48 of the Alcoholic Beverage Control Act, so-called, being Chapter 436, P. L. 1933, as amended or supplemented.

Counsel for the defendants raises several objections to the conviction. The first goes to the alleged impropriety of the Magistrate's return. The argument in this respect I feel is without legal merit since the review is had under Section 7 of the Criminal Procedure Act, P. L. 1895, Chap. 197. This indicates with strictness what the return must contain and makes, I think, the return in the instant case sufficient.

The second objection is in effect that the possession of an illicit alcoholic beverage with intent to sell is not interdicted by the statute. I am unable to follow the force of such reasoning in view of the plain language of Section 48 of the Act, being P. L. 1933, Chap. 436, as amended by P. L. 1934, p. 85. It is true that what are violations of the statute are set forth rather inartistically in this section, but it seems to me that the plain intendment of the words "all of which shall be violations of this act," occurring in the fifth line from the close of the section, read in their context, is clearly to prohibit possession of alcoholic beverages with intent to sell.

There is a further suggestion that the statute

itself is unconstitutional. I think there is an economy of verbiage in the title of the act, but this tendency in legislation, it seems to me, is one to be commended rather than condemned and that a statute so limited in title is not unconstitutional is plainly indicated in State v. Twining, 73 Law, 633.

It is further suggested that the delegation of administrative power to the State Alcoholic Beverage Commission is an usurpation of a legislative function. I find no merit in this argument.

The appeals are dismissed and the convictions in the respective cases affirmed. An order may enter accordingly.

Judge.

Dated:  
May 27 1935.

8. COURT DECISIONS - ESSEX COUNTY QUARTER SESSIONS - STATE VS. SCHILL, ET AL

State of New Jersey,  
Prosecutor,  
-vs-  
Alexander J. Schill and  
Edward Neil,  
Defendants.

On Indictment No. 417 Sept. T.  
1934 for  
Violation of Alcoholic Beverage  
Control Act.

On Demurrer.

OPINION

William A. Wachenfeld, Prosecutor of the  
Pleas, for the State.  
Louis J. Goldberg, for the defendants.

VanRIPER, J.

The defendants were indicted by the Grand Jury of this county in an indictment which charges that they "unlawfully did own, possess, keep and store in a certain building known as number fourteen Main Street, in the City of Orange, in the County of Essex aforesaid, certain illicit alcoholic beverage with intent to sell and distribute the said illicit alcoholic beverage."

The defendants have entered a special appearance and to this indictment they have filed a demurrer.

The indictment is attacked upon several points, only three of which we deem to be meritorious enough to warrant comment in this memorandum. The first is that the act under which the indictment is found and which is known as the Alcoholic Beverage Control Act, Pamphlet Laws of 1933, p. 1180, is unconstitutional in that it embraces more than one object and that the various objects covered therein are not expressed in the title

of the act. It is claimed that this is in violation of Article 4, Section 7, of the New Jersey Constitution and therefore invalidates the act.

This court has but recently decided, in an opinion by Judge Brennan, that this contention is not a valid one and that the title of the act, although meager in expression, sufficiently meets the constitutional requirements, citing *State vs. Twining*, 73 N.J.L. 683. The views of Judge Brennan as above referred to are concurred in herein.

The second point considered is that the indictment in itself does not charge a crime, it being contended on behalf of the defendants that there is nothing in the act itself which makes the owning, possessing, keeping or storing of illicit alcoholic beverages with intent to sell a violation of the act.

A cursory reading of the act would seem to lend merit to this discussion, but a careful examination indicates otherwise. Section two of the act defines "illicit beverage." The fact that a beverage is illicit of course makes it illegal.

The indictment in question is drawn under Section 48 of the act and, so far as its pertinent language is concerned, says that any one who shall "own, possess, keep, or store in this State alcoholic beverages with intent to sell alcoholic beverages in violation of the provisions of this act . . . all of which shall be violations of this act, shall be guilty of a misdemeanor."

The words "all of which shall be violations of this act" undoubtedly serve as a saving clause so far as the sustaining of this indictment is concerned. Section 2 making illicit beverage an illegal beverage, it must necessarily follow that Section 48 makes the sale of illegal beverages a violation of the act.

That the act itself is poorly drawn cannot be doubted. It would have been just as easy for the draftsman to have unambiguously expressed the intention of the act in clearer and unmistakable language. But neither can it be doubted that if the Legislature by the passage of this act intended to do anything, it certainly did intend to prescribe the method of legally dealing in alcoholic beverages and to make illegal the dealing in them in any way other than that provided for in the act. To do otherwise and to hold that the owning, possessing, and storing of illicit beverages with intent to sell the same are not a violation of the act would be to create an open-sesame for bootleggers and to invite a repetition of the very condition which was instrumental in bringing about the legalization of the manufacture and sale of alcoholic beverages.

The indictment, while not bad because of duplicity or of vagueness, is not definite in describing the reason why the alleged illicit beverages are illicit. This, however, may be cured by a bill of particulars.

The third contention considered here is that the indictment is void because it was based upon illegal evidence,

the evidence being the illicit beverages themselves which were seized by agents of the Alcoholic Beverage Commission without a search warrant.

The evidence was in the defendants' saloon or place of business, which was a place open to the general public. The agents who seized the evidence were without a search warrant at the time.

It is contended on behalf of the defendants that because the act sets up a method of securing a search warrant for the purpose of searching premises, there can be no legal search except under color of a warrant. This, however, is not the law. The fact that a search warrant may be procured for the purpose of search and seizure does not mean that there can be no search and seizure without such a warrant. This was very clearly said by the Court of Errors and Appeals in this state in the case of State vs. Mausert, 38 N.J.L. 286.

The case of State vs. Medinkowitz, cited by defendants, is not at all parallel. In the first instance that is a decision by a Supreme Court commissioner, and in the second instance that was not a case of search and seizure without a warrant but a situation where an improper warrant had been issued, and the warrant was quashed because of imperfections on its face and in the service thereof.

During all of the recent prohibition period the Federal courts, including the United States Supreme Court, held time and again that while the Federal Prohibition Act provided for the issuance of a warrant and prescribed the method of procuring the same, a search and seizure without a warrant under certain circumstances was a legal one and therefore was not in violation of the constitutional provision prohibiting unreasonable searches and seizures.

The goods seized in this case were in effect the evidence itself in that they comprise the illicit beverages the possession of which is alleged as one of the gravamen of the offense stated in the indictment. There is no evidence that there was any force used and any threats made by the seizing officers, nor was there any breaking down or breaking in in order to gain admittance.

The agents of the Alcoholic Beverage Control Commissioner have the right to visit and inspect places that are licensed for the sale of alcoholic beverages. That this right is in the public interest cannot be questioned. To say that although they have the right to visit and inspect, when they find illicit and illegal beverages being kept in violation of the law they are powerless to seize the same and use them as evidence would be to make a mockery of the law and its enforcement, and it would give every purveyor of illicit beverages who seeks to avoid the entirely reasonable provisions of the act the right not only to defy the law but to laugh in the face of its duly accredited agents. Nothing could be more conducive to lawlessness.

No one has any inherent right to engage in the liquor traffic. He does so by permission of the state or municipality through the licensing power. That power for the public good must have every reasonable means of enforcing not

only the law but its rules and regulations; and to find that its officers could not search or seize under any circumstance without a warrant would be to not only make them powerless but would make enforcement impotent.

In addition to this, however, it has long been the rule of this state that even though there is an illegal search and seizure, if the property so obtained is evidential in value, it may be used in evidence. This rule was very clearly laid down by the late Chief Justice Gummere in State vs. Gould, 99 N.J.L. 17.

For the reasons cited herein the indictment is held valid and the demurrer is overruled.

Newark, New Jersey,  
May 29, 1935.

\_\_\_\_\_  
Judge.

9. COURT DECISIONS - NEW JERSEY SUPREME COURT - BUMBALL VS. BURNETT

New Jersey Supreme Court  
No. 247, May Term, 1935.

Paul Bumball, :  
Prosecutor, :  
v. :  
D. Frederick Burnett, State :  
Commissioner of Alcoholic :  
Beverage Control of the State :  
of New Jersey, and the Mayor :  
and Council of the Borough of :  
Bernardsville, a municipal cor- :  
poration of the State of New :  
Jersey, :  
Respondents. :

Argued May 9, 1935: decided June 6, 1935.  
Before Justices Parker, Case and Bodine.  
For the prosecutor, Arthur A. Palmer.  
For the respondents, Nathan L. Jacobs.

The opinion of the court was delivered by PARKER, J.

The prosecutor applied to the borough authorities of Bernardsville for a liquor license, and met with a refusal. He appealed to the State Commissioner of Alcoholic Beverage Control (See P.L. 1934, p. 218) and that official affirmed the borough refusal. Prosecutor then applied to a justice of this court for a writ of certiorari to review those refusals, and allocatur was denied. He renews his application to this court in banc.

We concur in denial of an allocatur. As a matter of practice, the moving affidavit - and we have merely that of the prosecutor himself - mentions an ordinance of the borough bearing on the subject and claims that it is silent on certain allegedly material points, but attaches no copy of it, so that we are in the dark as to its language. A resolution of the

Council is quoted only in part. The decision of the Commissioner on appeal is not laid before us, except to the extent of its denial of a license. The court in deciding whether to award its prerogative writ, is entitled to much more than an affidavit of conclusions, and of facts stated on information and belief, as here.

Apart from this, and assuming the facts claimed, to wit., that the ordinance itself placed no limit on the number of licenses to be issued, and the resolution of Council to grant no more, was adopted after prosecutor's application and one other were already filed, we see no illegality whatever in the refusal of a particular license, at least so long as the refusal is not shown to be fraudulent, corrupt or inspired by improper motives. Nothing of the kind appears in this case. Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee: but that is not the case. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.Law, 585, 595. "No one has a right to demand a license: license is a special privilege granted to the few, denied to the many." Id. p. 596. "There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the State of the United States." Meehan v. Board, 29 N. J. Law Journal, 370: 64 Atl., 689. See also Hagan v. Boonton, 62 N. J. Law, 150.

One phase of the present argument for the writ seems to be that as the ordinance (as claimed) says nothing about the number of licenses to be issued, the borough council has no power to call a halt until, with a slate clean of pending applications, it ordains a limit, or at least fixes a limit by resolution: but we see no merit in this. If the ordinance had fixed one hundred as a limit, still the council, in its discretionary power to license or not to license, could stop short of that number at any point, or could license A and refuse B. As a matter of history, in this very county of Somerset a quarter of a century ago, when licenses were controlled by the Court of Common Pleas, and there was no legal limit on the number, that court announced that, in its opinion, there were enough licensed places in the county, and no more licenses would be granted until further order. No question of the legality of this action was ever formally raised.

We deem the application for a writ wholly without merit, and allocatur is denied.

It may do no harm to add, that in view of 17 existing licenses in a population of 3,336, or more than one license to each 200 inhabitants, the judgment of the Mayor and Council in refusing to grant more, seems to have been a sound one.

10. APPELLATE DECISIONS - MAURER VS. SUSSEX

EMMA MAURER, )  
Appellant, )  
-vs- )  
MAYOR AND COUNCIL OF THE )  
BOROUGH OF SUSSEX (SUSSEX )  
COUNTY), )  
Respondent. )  
- - - - - )

ON APPEAL  
CONCLUSIONS

Oscar Greenberg, Esq., Attorney for Appellant.  
Robert H. Lee, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at #19 Church Street, Sussex, being a 22 room summer resort hotel.

Appellant complied with all the statutory prerequisites pertaining to her application; her character and the suitability of the premises sought to be licensed are unquestioned.

The main contention of respondent is that the application was properly denied by virtue of its resolution, adopted June 19, 1934, "that the number of retail licenses for the sale of alcoholic beverages in the Borough of Sussex be limited to four, and be it further resolved that said licenses be issued only to regularly established hotels", coupled with the previous issuance of the allotted number.

No contention is made that appellant's place is not a bona fide and regularly established hotel. It is frankly stipulated that it is an asset to the community. There are five hotels in the town. Four have been licensed. The appellant has been excluded. The question is presented - is the numerical limitation as applied to her hotel reasonable?

I have heretofore decided that hotels are affected with a public interest so far as the sale of alcoholic beverages is concerned. In A. B. C. Holding Co., Inc. vs. Newton, Bulletin 58, Item 11, the denial of an application of an hotel for a consumption license upon the ground that a sufficient number of licensed premises existed in the municipality was overruled. It was there said:

"Hotels, as such, must be distinguished from ordinary liquor stores. Hotels are vested with a quasi-public function. They are charged with the duty of accepting all proper persons as guests and of furnishing them with accommodations so far as the capacity of the hotel permits. See Watkins vs. Cope, 84 N.J.L.143 (Sup.Ct. 1913); see also Re Corona, Bulletin #29, Item #5. They discharge a public function. They are, therefore, not to be classed as ordinary drinking places. It is not fair to discriminate against a hotel unless good cause exists."

In Retail Liquor Dealers Association of the Plainfields vs. Plainfield, Bulletin 70, Item 1, cases concerning hotels are reviewed at length and it was held that a municipal ordinance which excepted hotels from screen requirements did discriminate in favor of hotels, but that such discrimination was reasonable and proper.

Conversely, a municipal ordinance discriminating against hotels was disapproved. Re Dunk, Bulletin 70, Item 7.

The Legislature itself, in the Control Act, has expressly provided for exceptions in favor of hotels and restaurants. Section 13 sub. (1). The new Supplement, Section 5

(Senate Bill 289), approved by the Governor on June 10, 1935, makes a further exception in favor of premises operated as a bona fide hotel.

I conclude that the numerical limitation of licenses unfairly discriminates against appellant's hotel and as applied to it is unreasonable.

The record shows a stipulation by counsel "that the premises wherein Appellant wishes to conduct a liquor business is more than 200 feet from the nearest entrance to the First Presbyterian Church; that the representatives stated at the hearing before Council that the relations between the Appellant and the Church had been always the most cordial, but that since the property of the Appellant adjoined the Church property, the Church felt obliged to register an objection, principally because the Church is unalterably opposed to the liquor business; that the said objection, however, is general in nature, and there is no complaint against the qualifications of the Appellant nor the past conduct of her establishment."

While a municipality may properly adopt a policy not to issue licenses for premises too close to churches or schools even though beyond two hundred feet, there is no testimony in the instant case that respondent has ever considered or adopted such a policy. In the absence thereof, a general objection to the issuance of a license to an applicant who is worthy and well qualified both as to person and place cannot afford a reasonable basis for denying the application.

The action of respondent is reversed, but as 90% of the fee deposited by appellant has been returned to her, this reversal is upon the express condition that the proper prorated portion of the license fee payable to respondent be paid by appellant prior to the issuance of the license.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 12, 1935

11. APPELLATE DECISIONS - GEIGER VS. READINGTON

FRANK W. GEIGER, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF )  
READINGTON TOWNSHIP (HUNTER- )  
DON COUNTY), )  
Respondent. )  
- - - - - )

ON APPEAL  
CONCLUSIONS

Braelow & Tepper, Esqs., by Herman W. Brams, Esq., Attorneys  
for Appellant.  
Gebhardt & Gebhardt, Esqs., by Philip R. Gebhardt, Esq., Attor-  
neys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises known as "Idle Rest", Readington Road, Readington.

Respondent contends the application was properly denied by virtue of its limitation of the number of licenses to be issued to three and the issuance of the allotted number. Although a limitation is subject to appeal it will not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. Ryman vs. Branchburg, Bulletin 37, Item 18.

The reasonableness of the adoption of the limitation in question was considered and upheld by the Commissioner in Rosania vs. Readington, Bulletin 55, Item 3. No facts were disclosed at the hearing of the instant case to alter the conclusion stated therein.

Appellant contends, however, that the application of the limitation to him was unreasonable because (1) the three present licensees were improperly preferred over him, and (2) his premises constitute an hotel.

The three present licensees were licensed for the period expiring June 30, 1934 whereas appellant was not. Appellant's claim of discrimination, however, is not based upon the preference accorded to these three licensees for the current period but goes back to the period expiring June 30, 1934 when appellant's application was first denied by respondent. Appellant appealed this denial to the Commissioner but the action of the respondent was sustained on the ground that its determination that appellant was personally unfit to receive a license at all was reasonable. Geiger vs. Readington, Bulletin 37, Item 4. Appellant cannot assert, therefore, at this time that his original exclusion was improper.

Appellant claims that his premises constitute an hotel and that therefore the denial of his application pursuant to the municipal limitation was unreasonable, invoking the principle just adjudicated in Maurer v. Sussex, Bulletin 79, Item 10. The question, therefore, arises - does appellant's premises constitute an hotel?

In Apgar vs. Tewksbury Township, Bulletin 66, Item 2, it was held on the facts that the premises there under question did not measure up to the usual concept of an hotel. I there said:

"In these appeals, there are no magic words to be conjured. The mere invocation of the term 'hotel' by an appellant is no more dispositive than the mere assertion by a respondent that a license would be 'socially undesirable'. Everything depends on the facts."

In the instant case the record shows that the premises sought to be licensed are located on a dirt back road away from the principal highway; that the road is dangerous of passage on a rainy day; that bill posters put up by the appellant designate the premises as "Geiger's Beer Garden"; that although he accommodates transients and week-end guests, he admitted upon the prior appeal (Bulletin 57, Item 4) that very few people ever stay there, and because of this fact he had conducted a speakeasy there during Prohibition days.

I find that appellant's premises, so far from being an inn of the better class which could fairly be dignified by the term "hotel", partakes of the nature of a speakeasy roadhouse.

The action of respondent is affirmed.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 12, 1935

## 12. PRINTING OF NOTICE OF INTENTION - LEGAL NEWSPAPERS - PUBLICATION AND CIRCULATION

May 29, 1935

Dear Commissioner:

The enclosed copy of letter received this morning from the Daily Courier is self-explanatory. However, to familiarize you with the true facts, we outline briefly as follows:

Immediately after the organization of this Board as of December 5th, 1933 rules and regulations under which we were to operate were set up under the guidance of our City Counsel, Judge Walter C. Ellis. Both publications, the East Orange Record and the Daily Courier were considered for the publication of the "Notices of Intention", the former being a weekly paper and the latter a daily paper. However, the East Orange Record appeared to us to measure up to the precise requirements of Section 22 of the Beverage Act for the reason that it (East Orange Record) confines its activities solely to East Orange and is printed, published and circulated in East Orange, while the Daily Courier is published and printed in the City of Orange with no office in East Orange, though circulated in the five municipalities namely, Orange, East Orange, West Orange, South Orange and Maplewood.

In view of the diversion of opinion as to the strict interpretation of Section 22 of the Beverage Act as applies to this matter between the Daily Courier and this Board, we respectfully refer the matter to you for your opinion.

Very truly yours,  
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL,  
Jacob L. Bock, Secretary

May 28, 1935

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

Dear Sir:

We understand that your Board has not officially designated the Daily Courier of the Oranges and Maplewood as an official medium for the publication of the notices of intention to apply for liquor licenses.

Evidently this is an oversight on your part for the following reasons:

FIRST: The Daily Courier has published consecutively each evening except Sundays and holidays since November 1926 and therefore is considered by the State of New Jersey as an official medium qualified to publish legal notices.

SECOND: On January 1, 1935 the Council of East Orange designated the Daily Courier as an official medium for the publication of legal notices.

THIRD: The Daily Courier is printed in the English

language and according to Bulletin #35, Section #2 the address of the physical process of printing is not a determining factor.

FOURTH: Since 1926 the Daily Courier has been published for "The Oranges and Maplewood"--a common term commonly used and known to describe a combination of the following municipalities-- East Orange, Orange, West Orange, South Orange, and Maplewood. The Courier in 1926 was organized by the Chamber of Commerce for the express purpose of giving to the Oranges and Maplewood as a unit a local daily newspaper edited and published and circulated exclusively for the combined Oranges and Maplewood. The Courier has never been published or edited or circulated for any specific one of the Oranges or Maplewood. It is the only daily newspaper of the Oranges and Maplewood just like the Chamber of Commerce and Civics of the Oranges and Maplewood, the Welfare Association of the Oranges and Maplewood, the Y.M.C. A. of the Oranges and Maplewood and other similar organizations for the combined municipalities.

The fact that the Courier is for practical purposes printed at one location, that its news happens to be finally assembled at one location and that location happens to be at a centrally located point which is 17 North Essex Avenue, Orange, this function performed in one location rather than split up into five identical processes in five different locations as a matter of efficiency and economy does not necessarily limit the publication to the individual municipality of Orange.

FIVE: The Daily Courier has continually been circulated to paid subscribers in all of the four Oranges and Maplewood commonly known as the Oranges and Maplewood.

Therefore for the above reasons there is no question but what the Courier qualifies as an official medium for the publication of legal notices in the Oranges and Maplewood of which East Orange is a part. Consequently we respectfully call your attention to our qualifications in order that you may officially recognize us as the official medium for the publication of your notices of intention to apply for liquor licenses.

Will you please read this letter of request which is respectfully submitted to the Board of Alcoholic Beverage Control when it meets on Tuesday, June 4th.

Yours truly,  
THE DAILY COURIER  
John D. Hogue, Jr.  
Publisher

JDH:EMM

June 4, 1935

Municipal Board of Alcoholic Beverage Control,  
East Orange, N. J.

Gentlemen:

I have your letter of May 29th and enclosure.

In Bulletin #35, Item #2 and Bulletin #67, Items #15 and #16, the Commissioner set forth in detail the qualifications required by newspapers for the publication of notices of intention. You will note therefrom that where a newspaper is published and circulated within a municipality, it is not disqualified solely because it is printed elsewhere. The courts have generally defined the word "published" to mean the place where the paper was

first issued to the public.

Where inquiry is made as to whether a particular newspaper is qualified to publish a notice of intention to apply for a retail license in a particular municipality, it is the duty of the municipal issuing authority to decide the matter on the basis of the principles set forth in the Commissioner's rulings and bearing in mind that the legislature contemplated that notices of intention shall be published in such manner that they will be likely to reach persons interested in and affected by the respective applications for licenses. The municipal issuing authority is best situated and equipped to make such determination, in the first instance, after reviewing all of the pertinent facts.

Consequently, the Commissioner has consistently declined to express any opinion as to whether any particular newspaper is qualified to publish notice of intention to apply for a municipal license, except where such issue arises in the course of an appeal properly taken under the Control Act.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner  
By: Nathan L. Jacobs,  
Chief Deputy Commissioner  
and Counsel

NLJ:OK

13. APPELLATE DECISIONS - LEGGETT VS. MANASQUAN

EDWARD W. LEGGETT,	}	
Appellant,		
-vs-		
MAYOR AND COUNCIL OF THE BOROUGH	}	ON APPEAL
OF MANASQUAN (MONMOUTH COUNTY),		CONCLUSIONS
Respondent.	)	

Vincent P. Keuper, Esq., Attorney for Appellant.  
Halsted H. Wainwright, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at #217 First Avenue, in the Borough of Manasquan.

The application was denied on the basis of respondent's policy considered and held valid in Dann v. Manasquan, Bulletin 37, Item 12.

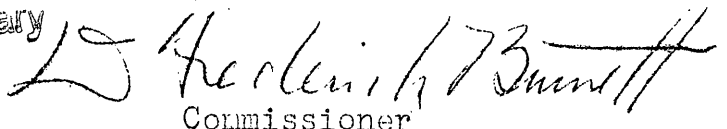
The premises involved in the Dann case were in the same vicinity as appellant's premises.

The application in Minier v. Manasquan (unreported) for premises located next door to appellant's premises, to wit: #215 First Avenue, Manasquan, was denied for the same reason as in the Dann case and this denial was likewise sustained on appeal.

It thus appears that respondent has uniformly applied its policy prohibiting the issuance of licenses for premises located close to the boardwalk. Its reasonableness and propriety have already been decided. Dann v. Manasquan, supra.

The action of respondent is affirmed.

New Jersey State Library



Dated: June 17, 1935

Commissioner