COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

STATE OF NEW JERSEY

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

BULLETIN NUMBER 85 August 7, 1935

1. LICENSEES-- EMPLOYMENT OF PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE OR CITIZENSHIP -- NOTICE

On July 5th, 1935, rules and regulations were promulgated to govern the employment by licensees of persons failing to qualify as to age or residence or citizenship, which require that issuance of a Permit for such employment first be obtained from the State Commissioner of Alcoholic Beverage Control. The effective date of these rules and regulations was set as August 1st, 1935.

The preparation of application and permit forms necessarily has consumed a large part of this period. Therefore, to afford an opportunity to all licensees to submit the necessary applications and obtain permits, the effective date of these rules and regulations is hereby extended to August 31st, 1935.

D. FREDERICK BURNETT
Commissioner

Dated: July 31, 1935.

2. ALIENS --QUESTION CONSIDERED WHETHER PHILIPPINOS WHO ARE SUBJECTS OF THE UNITED STATES ARE ALIENS OR NOT

August 1, 1935.

Thomas C. Mitchell, Esq.,
New Brunswick, New Jersey.

Dear Sir: Re: Pullman Company

Referring to conference with you in reference to employment by the Pullman Company of Philippinos on Pullman Club and Buffet cars, which employment involves, among other things, the sale and service of alcoholic beverages:

The question whether these Philippinos, admittedly subjects of the United States, are aliens and therefore barred by Section 23 of the Control Act, or whether they are citizens of the United States, and hence qualified, is a question fraught with considerable difficulty.

The Federal Act provides for Philippine citizenship:

"All inhabitants of the Philippine Islands who were Spanish subjects on April 11th, 1899 and residing in said Islands on that date and their children, born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands". Title 48, Ch. 5, U.S.C.A., par. 1002.

The Philippine Independence Acts of January 17, 1933 and March 24, 1934 provide for a constitutional convention and contain a declaration that citizens of the Philippine Islands who are not citizens of the United States shall be considered as aliens--semble that they may be citizens.

It is not enough that a person is a subject of the United States to be qualified to sell or serve alcoholic beverages in New Jersey. Our Statute declares that he must be a citizen of the United States. Subjects are not necessarily aliens.

I shall seek an immediate ruling from the Federal Secretary of State on the point involved. My final ruling will, of course, be predicated thereon. In the interim it would not be fair to throw them summarily out of employment, and I therefore rule tentatively that they may be employed by the Pullman Company providing that they are, at least, citizens of the Philippine Islands within the above definition.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - BUCZEK v. PISCATAWAY

John Buczek, Appellant, -vs- Township Committee of the Township of Piscataway, Respondent.	)	On Appeal CONCLUSIONS

Maurice M. Bernstein, Esq., Attorney for appellant

John T. Keefe, Esq., Attorney for respondent

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a renewal of his plenary retail consumption license for premises located at #381 Rushmore Avenue, Piscataway Township.

Respondent alleged in its answer as the reasons for denying the application that appellant did not personally devote sufficient time to his business, but permitted others to manage and control the same and that the business was being conducted by appellant's step-father who is not a citizen of the United States.

Pursuant to section 19 of the Control Act as amended by P. L. 1935, chapter 257, appellant applied to the Commission or for an extension of his license pending the appeal. On the return of the order to show cause, testimony was taken from which it appeared that the appellant was personally qualified;

that the licensed premises were suitable; that appellant had complied with all the statutory prerequisites; and that appellant was the true owner of the business conducted during the preceding license period. Accordingly, the Commissioner ordered the license extended pending the determination of the appeal.

Later, at the hearing of the appeal, respondent filed a stipulation reciting that respondent had adopted a resolution approving the issuance of a license to appellant, and stipulating respondent's consent to the entry of an order reversing its its refusal to grant said license.

In view of the foregoing, the action of respondent is reversed.

D. FREDERICK BURNETT
Commissioner

Dated: July 31, 1935.

4. APPELLATE DECISIONS --FEDERKO v. PISCATAWAY

Nicholas Federko, Appellant,	)	
-vs-	)	On Appeal
Township Committee of the Township of Piscataway, Respondent.	)	CONCLUSIONS

Maurice M. Bernstein, Esq., Attorney for appellant

John T. Keefe, Esq., Attorney for respondent

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a renewal of his plenary retail consumption license for premises located on William Street, Piscataway Township.

Respondent alleged in its answer as the sole reason for denying the application that appellant was not a fit person to receive a license because of several serious altercations which had occurred upon the licensed premises during the preceding license period.

Pursuant to section 19 of the Control Act as amended by P.L. 1935, chapter 257, appellant applied to the Commissioner for an extension of his license pending the appeal. On the return of the order to show cause testimony was taken with reference to respondent's allegation. Since it did not appear from this testimony that the action of respondent was prima facie erroneous, the Commissioner refused to exercise the discretion vested in him to grant any extension.

At the hearing of the appeal, respondent did not appear. Instead a stipulation was filed, signed by its attorney, reciting that respondent, on July 29, 1935, had adopted a resolution which approved the issuance of a license to appellant and stipulating that respondent consents to the entry of an order reversing its refusal to grant said license. Although this stipulation is not binding upon me, I shall give it weight in examining the record because respondent is primarily charged with the duty of issuing retail licenses in Piscataway Township and determining the fitness of applicants.

The record reveals that appellant was convicted of assault and battery at the licensed premises during the preceding license period. It appears that this resulted from his use of a baseball bat in ejecting boisterous and disorderly persons from his premises. Had he used a reasonable amount of force, his action would have been justified. The use of bats and bung-starters in these impromptu ousters is deplorable. Every licensee must maintain order and decency but it is not necessary that eight stitches be taken in an offender's scalp to inculcate respect for the law and the licensee's prowess. It is always dangerous to take the law into one's own hands. Better call the police. Re Backer, Bulletin #63, Item #8.

The question now before me, however, is not to adjudicate niceties in the use of force. The question is whether his conviction involved moral turpitude. There was no premeditation, no maliciousness. It all happened in an excited moment. The licensee wanted to close his place at 2:30 a.m. His customers insisted on the usual "one more drink". When refused, they stormed the bar to help themselves. The licensee insisted that they leave and batted two of them over the head to convince them he meant it. He was in the wrong. He committed the crime of assault and battery. He should be and has been punished for his use of excessive force. But this is not the question. I find that this conviction did not involve moral turpitude.

Accordingly, the action of respondent is reversed.

Dated:
July 31, 1935

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS --TUNACK CLUB v. CLIFTON

Tunack Club, Inc., a corporation of New Jersey,

Appellant,

-vs-

Mayor and City Council of the City of Clifton,

Respondent

On Appeal
CONCLUSIONS

Israel Friend, Esq., Attorney for appellant

John C. Barbour, Esq., by Donald G. Collester, Esq.
Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at #835 Main Avenue, Clifton, N.J.

Respondent contends that the application was properly denied because Tunis Holster, president of appellant corporation was indicted by Passaic County Grand Jury for non-feasance in office while Chief of Police of Clifton and that he pleaded non vult to such indictment.

Tunis Holster is the president and principal stockholder of appellant corporation. On April 13, 1934, during the so-called Carpenter investigation, he was indicted on two counts. The first charged him with continuous and wilful neglect to perform his duty as Chief of Police of the City of Clifton in that he permitted to be operated therein slot machines, gambling, horse-betting, lotteries, dice games and also an illegal still. The second count charged him with failure to investigate, prefer charges and dismiss certain police officers and detectives in his Department who permitted such illegal activity with his knowledge To this indictment he pleaded non vult, was fined $1000.00 and consequently dismissed from office as Chief of Police.

Section 22 of the Control Act provides that no license of any class shall be issued to any corporation unless all officers and all stockholders holding 10% or more in beneficial interest of the capital stock shall qualify as an individual applicant in all respects, except as to citizenship, residence or age. No license may, therefore, be issued to appellant if said Tunis Holster is not personally qualified to receive a license in his own name.

Section 22 further provides that no license of any class shall be issued to any person who has been convicted of a crime involving moral turpitude.

There is no hard and fast rule as to whether any particular crime involves moral turpitude. It does if the crime is one which is immoral in itself regardless of the fact that it is punished by law. It does not if the conviction is no more than an adjudication that the defendant has violated some rule or done something forbidden but not intrinsically wrong. In re Moral Turpitude, Bulletin #15, Item #5, I said:

> "The facts are to be analyzed to see if devoid of hypocrisy, fanaticism, and hard-shelled prejudice, one should or should not feel a sense of shame because of the act for which he was convicted."

Applying these tests, I reach the clear conclusion that the conviction of a Chief of Police, whose plea admits the truth of the above indictment, shows a crass dereliction of sworn public duty and a wilful betrayal of public trust and therefore involves moral turpitude.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: July 31, 1935.

6. EMPLOYMENT PERMITS--ALIENS--TRUCK DRIVER OF A BREWERY WHO DOES NOT SELL OR SOLICIT SALE OF ALCOHOLIC BEVERAGES IS NOT BARRED FROM OBTAINING AN EMPLOYMENT PERMIT

EMPLOYMENT PERMITS--MINORS--MINORS ENGAGED IN THE MANUFACTURE OF BEER ALTHOUGH APPRENTICED ARE NOT ENTITLED TO EMPLOYMENT PERMIT AND MUST QUIT SUCH SERVICE UNTIL THEY BECOME OF AGE

EMPLOYMENT PERMITS--RESIDENCE--NOT NECESSARY FOR EMPLOYMENT BY LICENSEES OTHER THAN RETAIL LICENSEES SINCE THE FIVE YEARS' RESIDENCE RULE APPLIES ONLY TO RETAIL LICENSEES.

August 1, 1935.

Mr. A. E. Zusi,
Secretary of Brewery Workers' Local #148,
Newark, New Jersey.

Dear Mr. Zusi:

Confirming conference with you, Mr. Hopkins, Secretary of Local #268, and Mr. Ruhnke, Secretary of Local #2, concerning employment by breweries of persons who are (1) aliens, (2) minors; (3) who have not resided in New Jersey for five years continuously immediately prior to employment:

1. A person who has taken out only his first papers is still an alien. Bulletin #30, Items 2 and 3. Section 22 of the Control Act provides: That no license of any class shall be issued, either to an alien or to a minor. Section 23 provides that no person who would fail to qualify as a licensee shall be knowingly employed by or connected in any capacity whatsoever with the Licensee. Hence, if the Statute stopped at this point, neither aliens, nor minors could be employed by a brewery. Section 23, however, as now amended, further provides that persons failing to qualify as to age, residence or citizenship may, with the approval of the commissioner, and subject to rules and regulations, be employed by a licensee, but such employee shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage.

Rule 2 of the Rules and Regulations governing the employment by Licensees of persons failing to qualify as to age or residence or citizenship (Bulletin 82 - Item 10) provides:

> "2. No person to whom such permit shall have been issued shall in any manner whatsoever <u>serve</u> or <u>handle</u> or sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage." (Italics mine)

The addition in the Rule of the italicized words to the statutory words was made with particular reference to the retail sale of alcoholic beverages for consumption on the premises in order to break up the practice of unqualified persons serving alcoholic beverages, as part of a sale, even though not technically constituting a sale of itself. It was not designed to prohibit the transportation of alcoholic beverages. The Statute is silent as to transportation. In a strictly legal sense, delivery is an integral part of a sale and often dispositive of the question as to when title passes. The question before me, however, is not the implied meanings which might be deduced from the verb "to sell

but rather what the Legislature meant by the express words they did use. The enumeration of specific terms in the Statute must be held to exhibit the intent to exclude all other terms. The Legislature could readily have added transportation or delivery if such had been its intent. The word "handle" is therefore confined in its meaning to sales for on-premises consumption.

It is, therefore, ruled that neither the Statute nor the Rules and Regulations aforesaid prohibit a permit to an alien truck driver of a brewery who does not sell or solicit the sale of any alcoholic beverage or otherwise indulge in any of the acts forbidden by the Statute. All such permits issued will be so conditioned.

This ruling is in line with that heretofore made in Re Central Labor Union, Bulletin 20, Item 3, where I held that it is illegal for minors to dispense intoxicating liquors, but that it is possible for a retail licensee to employ a minor to make deliveries of sales previously effected by duly qualified employees.

2. A minor is anyone under the age of twenty-one years. Despite the practice which has heretofore obtained in the brewing industry of apprenticing minors to learn the industry, the Statute expressly forbids that any minor shall be employed by the Licensee in the manufacture, mixing, processing or bottling of any alcoholic beverage. These minors will, therefore, have to quit service in the manufacture of beer until they become of age.

3. The requirement as to five years' residence applies only to applicants for retail licenses. Re Kerns Co. Bulletin 77, Item 8. Hence there is no objection as the law now stands to a brewery employing a person who has not resided in New Jersey for five years continuously immediately prior to employment or in fact one who is not a resident at all, provided that under the Alcoholic Beverage Control Act he is otherwise qualified.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. APPELLATE DECISIONS -- WEISS v. CLIFTON

Samuel Weiss,
Appellant

-vs-

Mayor and City Council of the City of Clifton,
Respondent

On Appeal
CONCLUSIONS

Irving L. Worksman, Esq., Attorney for appellant

John C. Barbour, Esq., by Donald G. Collester, Esq.,
Attorney for Respondent

John C. Grimshaw, Esq., Attorney for Objector.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at #175 River Road, Clifton, New Jersey.

Respondent contends the application was properly denied because appellant perpetrated a fraud upon respondent by operating during part of the preceding license period under a license issued to another.

At the hearing it appeared that on February 14, 1935, one Samuel J. Newman filed an application with respondent for a plenary retail consumption license for the same premises as those for which appellant now applies. On February 26, 1935, this application was approved and a license issued. About ten days later appellant, Weiss and one Richard E. Lewis and said Samuel J. Newman formed a partnership to conduct the business on the licensed premises. Pursuant to the partnership agreement and without notifying respondent, the partnership immediately began to operate the business under Newman's license, appellant devoting all his time thereto. Subsequently, respondent learned that the licensee was not the sole person interested in the business and revoked the license.

Section 31 of the Control Act provides that:

> "Whenever any change shall occur in the facts as set forth in any application for license, the licensee shall file with the commissioner or other issuing authority as the case may be, a notice in writing of such change within ten days after the occurrence thereof."

No person or group of persons may lawfully operate under a license granted to another person. Where a licensee forms a partnership, said partnership may not operate until it obtains a license in the name of the partnership. Re Simandl, Bulletin #54, Item #3.

Respondent's denial of appellant's application was reasonable.

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: August 2, 1935.

8. APPELLATE DECISIONS -- GRUBER v. RUTHERFORD

JOHN GRUBER,

Appellant

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF RUTHERFORD (BERGEN COUNTY),

Respondent

ON APPEAL
CONCLUSIONS

Albert Bivona, Esq., Attorney for Appellant.

Oliver T. Somerville, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail distribution license for premises located at #50 Park Avenue, Rutherford, wherein he conducts a delicatessen business.

On December 13, 1933 the respondent adopted a resolution limiting the number of retail distribution licenses to one for every twenty-five hundred (2500) persons residing in the Borough of Rutherford by the last Federal census. The 1930 census for Rutherford is 14,915. This resolution in effect established a numerical limitation of six (6) retail distribution licenses. Pursuant thereto six were issued and all have been renewed for the current licensing period.

Respondent asserts that the application of appellant was properly denied in view of the limitation and the issuance of the allotted number.

Section 37 of the Control Act expressly authorizes the municipal issuing authorities to limit the number of licenses to sell alcoholic beverages at retail. Although a determination by a municipal issuing authority that a limitation is socially desirable is subject to appeal, it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. See Ryman vs. Branchburg, Bulletin #37, Item #18.

Appellant alleges in his petition of appeal that respondent's limitation as applied to his application is unreasonable and discriminatory because his is the only delicatessen store in Rutherford that has not received a retail distribution license. At the hearing counsel for appellant conceded that this allegation is erroneous.

The testimony also revealed that one of the six retail distribution licenses had been issued for a store four or five doors away from appellant's place of business; also that two other such licenses had been issued for stores within a distance of one block.

No evidence, except the bare statement of the appellant himself, was introduced to establish that the numerical limitation was in itself unreasonable. Such statement, standing alone, is not sufficient.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: August 5, 1935.

9. APPELLATE DECISIONS -- HEALEY v. ORANGE

MALACHY HEALEY, Appellant,	)	
-vs-	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF ORANGE, Respondent.	)	CONCLUSIONS

Malachy Healey, Pro se
Edward R. McGlynn, Esq., by Franklin J. McGlynn, Attorney for Respondent
Frederick H. Tegen, Esq., Attorney for North Orange Baptist Church, an Objector.

BY THE COMMISSIONER:

This is an appeal from denial of an application for Plenary Retail Consumption license for premises known as 5 and 7 Park Street, Orange.

No question was made of the character of appellant. In fact, it was conceded that he is a fine type of man. His application was denied because in the discretion of the respondent Board there were sufficient licenses in the locality.

The record discloses that the North Orange Baptist Church is two hundred eighty-eight (288) feet from the premises for which this license is sought, and Grace Church three hundred twenty-eight (328) feet therefrom. The General Secretary of the Orange Y.M.C.A., whose building is located three hundred three (303) feet from the premises, testified that the total membership of that branch is twenty-five hundred (2,500) of whom nine hundre (900) are under the age of eighteen (18) and one hundred (100) ar permanent guests; that many of these members would pass the premises in going to the Y.M.C.A. and returning to their homes.

The location was described as being on Park Street, between Main Street and William Street, about twenty-six (26) feet from Main Street, which is the principal business street of Orange. The block on Park between Main and William contains many small stores, some with living apartments above, but the surrounding neighborhood is residential. One place licensed for consumption is on Park Street about a block away; another so licensed on Main Street about four hundred fifty (450) yards away another, licensed for distribution on Main Street, just around th corner from Park Street. Including the above, seven licensed

premises are located within a radius of four blocks. The locality is in no danger of becoming arid.

In determining whether there are a sufficient number of licensed premises in any given vicinity, it is proper to consider the physical nature of the neighborhood and the temperament of persons residing therein. Shinn vs. Camden (Bulletin #64, item 8).

It did appear that the City had granted a consumption license to another licensee for the same premises for the period expiring June 30, 1935, but it also was shown that this license had been surrendered in February, 1935, and that the store has been vacant since that time.

No other witnesses appeared to support appellant's testimony which, of itself, fell far short of showing that the license was necessary or socially desirable. On the other hand, the Board gave weight to the objections of the Hebrew Institute and the other organizations above mentioned.

It has not been established that the action of respondent was arbitrary or unreasonable or contrary to the best interest of the community at large or motivated by anything but an honest and sound exercise of discretion. Bumball vs. Bernardsville, (Bulletin #66, item 9).

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: August 5, 1935.

10. REVOCATION PROCEEDINGS--WHEN WITHDRAWN FROM LOCAL ISSUING AUTHORITIES

August 4, 1935.

William B. Jeffrey, Esq.,
Clerk of Ocean Township,
Oakhurst, N. J.

My dear Mr. Jeffrey: Re Michael Bodenstein, trading as "Giddy's - Wanamassa Gardens."

I have today examined the report of Inspectors Brewster and Barnes of the proceedings held August 1st before your Township Committee in the matter of the gambling charges against above licensee.

It appears that despite the clear, cogent and convincing testimony of gambling actually witnessed by these Inspectors, and participated in by one of them, the Township Committee chose to ignore the testimony of two sworn officers of the law and dismissed the charges because other persons testified that they had not seen any gambling being done!

The report states:

"In the summation the defense attorney said that with all due respect to the Commissioner's representatives, he could not see how the evidence of two men could be held against rebuttal evidence of ten character witnesses which he had called to the stand to show that the premises was run in an orderly and reputable manner, etc. and that no gambling had existed prior to that night, the night in question or thereafter

"The summation ended and the Township Attorney simply sat smoking his pipe. He gave no indication that he was representing the Township and simply turned the matter over to the Township clerk. The Town Chairman requested that decision be reserved, but one of the Councilmen said that such evidence could be considered and decision rendered in five minutes and there was no necessity for reservation and delay for the decision. The motion was seconded and recess declared for five minutes. The Clerk called order in less than five minutes and motion was made to dismiss the charges. It was immediately seconded, voted upon and a tap of the gavel ended the proceedings with the dismissal of the charges."

The boasted celerity of Jersey justice has not been earned by making a mockery of the truth. It appears to have overstepped the speed limit in this case.

I am transmitting a synopsis of the case to Honorable Thomas R. Bazley, Prosecutor of the Pleas of Monmouth County, with request for the institution of such criminal action as he may deem appropriate and necessary to uphold the decent enforcement of the laws of the State.

In view of the travesty presented by the proceedings of August 1st, I am today directing my Department to transmit no further revocation proceedings to your Township for action, to the end that all further cases arising in your Township be handled by this Department direct.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

11. APPELLATE DECISIONS - MAURER v. SUSSEX

EMMA MAURER,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
MAYOR AND COUNCIL OF THE BOROUGH OF SUSSEX,)
Respondent)

Emma Maurer, Pro se.
Robert H. Lee, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of an application for a renewal of her plenary retail consumption license for premises known as #19 Church Street, Sussex.

The appellant is the same person, and the premises are the same premises mentioned in the previous appeal reported in Bulletin #79, item 10.

The petition of appeal herein, sets forth that the application for renewal of the license was denied on the same grounds set forth in the previous appeal, wherein the action of the respondent in denying a license was reversed.

Pursuant to Section 19 of the Control Act as amended by P.L. 1935, Chapter 257, the Commissioner issued an Order to show cause and extended the term of the license until the return day thereof.

It appears that at a special meeting held after the Commissioner issued such Order, the respondent rescinded its action in denying the application for a renewal of the license and adopted a resolution authorizing the issuance of a renewal thereof. The respondent had no power of reconsideration; Plager vs. Atlantic City (Bulletin #80, item 11). When respondent was notified by the Commissioner that its action was irregular, the renewal license, thus improvidently granted, was cancelled.

On the return of the Order to show cause, the license was further extended, pending determination of the appeal herein.

The appeal has been heard, Testimony was taken from which it appears that the appellant was personally qualified and that she had complied with all the statutory prerequisites. Respondent has filed an answer herein stating that it has no objection to the granting of the appeal.

In view of the foregoing, the action of respondent is reversed.

D. FREDERICK BURNETT
Commissioner

Dated: August 5, 1935.

12. SOLICITORS' PERMITS -- FEES--NO EXEMPTION FROM PAYMENT OF FEES IN FAVOR OF ANYONE.

July 16, 1935.

Mr. Peter M. R. Schedler,
Phillipsburg, N.J.

Dear Sir:

I have your letter of July 11th enclosing Honorable Discharge from the United States Army, which I am returning herewith.

The statute to which you refer provides that every honorably discharged soldier, sailor, marine, etc. shall have the right to hawk, peddle and vend any goods, wares or merchandise, or solicit trade within this State by procuring a

license for that purpose to be issued without charge by the County Clerk, as therein provided. See P.L. 1934, c. 119.

It would seem clear that even if the Control Act were silent on the question, this statute would have no relation to alcoholic beverage activity. Cf. 3 C.S. 3935, section 10. Unlike the license to vend ordinary merchandise, a liquor license and a permit to solicit the purchase and sale of liquor are not rights obtainable merely upon the payment of fees. The fees therefor are imposed not as a revenue matter but to aid in defraying the expenses incident to investigation, regulation and supervision.

Reliance need not be placed on general principles since the Control Act expresses a definite policy in this connection. Section 24 provides that "any statute or exemption to the contrary notwithstanding, no license shall be issued to any person except upon payment of the full fee therefor***". It might be contended that this provision does not apply to permits as distinguished from licenses. Such contention is invalid, however, since a permit affords within its terms privileges identical with those afforded by a license and is in substance a special type of license.

Accordingly, it is the Commissioner's ruling that a solicitor's permit may not be issued to a person holding an Honorable Discharge without payment of the statutory fee. Your application is being retained and action in connection therewith will be withheld pending receipt from you of the statutory fee.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

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

13. TRANSPORTATION LICENSES--INDEPENDENT CONTRACTORS--LICENSE ISSUED TO TRANSPORTATION COMPANY DOES NOT AUTHORIZE TRANSPORTATION BY INDEPENDENT CONTRACTORS UNDER EXCLUSIVE CONTRACT TO TRANSPORT FOR SUCH COMPANY

Dear Sir: Re: Preston Trucking Company, Inc.

The Preston Trucking Company, Inc., whom I represent, are engaged in interstate trucking and have been advised by the New Jersey Department of Alcoholic Beverage Control that in order to obtain a license permitting it to make deliveries of liquor within the State of New Jersey, it will be necessary that the transportation of liquor be by the Company and that in order for it to so obtain a license the Company must be actually engaged in transportation and the driver and helper thereon employees of the Company and the truck actually operated by the Company. The alternative offered by the Department was that each truck driver obtain an individual license permitting him to make deliveries within the State.

At your suggestion I am making a written request for a ruling which will permit the Company to operate under a single license. The Company operates as a broker for individual truck owners, soliciting business for the trucks to carry and deliver, making collections of freight charges against open invoice after delivery, the invoices and the solicitation letters containing only the Company name, obtaining cargo insurance, liability and property insurance under a master policy. The owner of the truck, who is the driver, contracts with the Company for an entire year to operate the truck solely on business obtained by the Company, and for no one else, agreeing to drive the truck on such business as is furnished him by the Company, he solicits no business, he is paid the full freight charge less ten per cent and cargo insurance ($2.50 per hundred freight charge), he pays his own liability and property damage insurance although the same is obtained by the Company under a master policy, he makes no collections and he is paid every Friday on the basis of delivery receipts turned in on Wednesday prior.

It is my belief that the purpose of this liquor legislation was to enable strict supervision over liquor transportation and to have some one particular person or Company responsible for the proper transportation thereof and that in effectuating this purpose the contract between the trucker and the Company achieves the same result as a lease agreement by the parties, for the contract gives the Company full control over the merchandise carried by the truck, the operation of the truck and the activities of the driver.

The Company is cognizant of pending Federal legislation regarding interstate traffic and finds the provisions contemplated more attractive to it as a broker than as an operator. Furthermore the lessor - lessee arrangement would mean a change in bookkeeping, would be a subterfuge of the true set-up, would confuse the corporate records with regard to New Jersey traffic and all other traffic including liquor, would give no more supervision than is completely possessed under the contract arrangement and would entail a substantial outlay for workmens' compensation insurance, the cost of the same eventually being borne by the truck owner.

The Company has orders for delivery of liquor into New Jersey already on hand and is very anxious to obtain a license so that it may begin operation as soon as possible. I will be very appreciative if you will consider the merits of my request for a single license to be issued to the Company as a broker and let me have your advice on the same at your earliest opportunity. Of course, we would be very pleased to file for record with you the above referred to contracts between the truck owner and the Company, the contracts containing those provisions as above set forth in the event that our request is granted.

Very truly yours,
BALDWIN & JARMAN

July 17, 1935.

Baldwin and Jarman, Esqs.,
Baltimore, Md.

Gentlemen: Re: Preston Trucking Co. Inc.

The transportation of alcoholic beverages into this State, except pursuant to license, is prohibited by section 2 of the Control Act. Section 14 of the Control Act provides that "the holder of a transportation license shall be entitled, subject to rules and regulations to transport alcoholic beverages into, out of, through and within the State of New Jersey and to maintain a warehouse". No reference is made in the Act to the relation between transportation licensees and independent contractors employed by them and consequently reliance must be placed on general principles of law.

The cases in this State uniformly hold that an independent contractor is not in the position of an employee or agent. Accordingly, the independent contractor alone is responsible for its torts, whereas if it were an agent or employee, its principal or employer would likewise be responsible. In every respect the independent contractor is conducting his own business as distinguished from the conduct of a business on behalf of another. This being so, it seems evident that where the independent contractor carries alcoholic beverages he will require a transportation license even though he is under exclusive contract to transport for a licensee.

None of the foregoing should be construed to limit in anywise the ruling that a licensee may lease vehicles from another for a substantial period of time, to be operated by bona fide employees of the licensee. See Bulletin #33, Item #8. Here the licensee itself is operating the vehicles through its employees and no question of independent contractor is involved.

It is the ruling of the Commissioner that a license issued to a transportation company will not authorize transportation by independent contractors under exclusive contract to transport for such company.

Very truly yours

D. FREDERICK BURNETT
Commissioner.

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

14. SOLICITORS' PERMITS--MAY BE ISSUED TO MUNICIPAL EMPLOYEES NOT CHARGED OR ENTRUSTED IN ANY MANNER WHATSOEVER WITH THE ENFORCEMENT OF ALCOHOLIC BEVERAGE LAWS OR THE ISSUANCE OF ALCOHOLIC BEVERAGE LICENSES.

My dear Mr. Burnett:

I have your rules and regulations governing solicitors' permits.

Will you please advise me whether Rule #8 prohibiting "member of a municipal governing body" from being a solicitor or receiving a solicitor's permit intends to prohibit a person engaged as Assistant Park Director or foreman from being a beer salesman. I will much appreciate your ruling.

Very truly yours
MARTIN KLUGHAUPT

August 6, 1935.

Martin Klughaupt, Esq.,
Passaic, New Jersey.

Dear Sir:

The purpose of rule 8 is to divorce the conduct of the alcoholic beverage business from those charged with the enforcement of laws governing the same. It, therefore, disqualifies from receiving a solicitor's permit any municipal employee who is charged or entrusted in any manner whatsoever with the enforcement of the alcoholic beverage laws or the issuance of licenses thereunder. It does not disqualify municipal employees whose official duties are in no wise concerned with or related to alcoholic beverages.

An assistant park director or a foreman, in the employ of a municipality, who has no official connection with alcoholic beverages would not be disqualified by the rule and therefore would not be prevented, on that score, from being a beer salesman, provided, of course, that there is nothing in local municipal policy or law preventing the dual employment and further provided that under the Control Act he is fully qualified.

Very truly yours,

D. Frederick Burnett
Commissioner