

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

BULLETIN NUMBER 10

JANUARY 12, 1934.

#1. Hon. A. Harry Moore,  
Chairman, Board of Alcoholic Beverage Appeals,  
State House,  
Trenton, New Jersey.

My dear Governor:

Pursuant to your direction of the 2nd inst., I have replied to Stanley L. Gedney, Jr., East Orange, as per attached copy.

I am transmitting to you herewith the appeal of Samuel Goldsmith, of Newark, represented by Attorney Morris Goldsmith of Newark. The latter's accompanying letter is addressed to "Board of Alcoholic Beverage Appeals, State House, Trenton, N. J.", which the Post Office authorities of Trenton, after considerable delay, readdressed to me probably because they are unaware of the office to which appeals to the Board should be addressed. Until you advise otherwise, I will suggest to all appellants that they address their correspondence to you direct as Chairman of the Board at the State House, Trenton.

Without any intention of trespassing upon the prerogatives of your Board, but solely with the idea of full co-operation, may I respectfully suggest that there is no ground for this appeal against the City of Newark. It boils down to the fact that the City properly demanded the full pro-rated annual payment in respect to this appellant's temporary license and in default threatened revocation of his license; that appellant not being willing to pay the additional fee and desiring to surrender his license, demanded of the City the return of the fee previously paid or the proportionate fee for the unexpired term, which payment he alleges has been refused. I happen to know that the City did not so refuse but requested a ruling from me as to how much, if any, of the fees so paid should be rebated, to which I have not yet, in the tremendous mass of more imperative duties, been able to reply, although I purpose to do so shortly. The City so far from refusing to pay appellant has indicated its intention to abide by whatever ruling shall be made. The situation brings to the fore the point that no appeals should be considered until there has been a final action taken in the premises by the inferior administrative body whose action is so appealed.

Also is transmitted the appeal (remailed as afore-said) of Robert Russo, of Ewing Township, Mercer County, represented by Attorney John H. Kafes of Trenton, appealing from the revocation of a license previously granted by the Township Committee to the Appellant. The appeal is based on eight grounds specifically set forth in the petition. My only duty in this matter is to call your attention to the following items:

1. Petition in form is well drawn and complies with the statute--this, of course, utterly aside from any question of the merits.

2. With this appeal in the hands of the Board there is still nothing before it to show what was done by the Township Committee or even in fact that it took final action and actually revoked the license.

It is therefore respectfully suggested that the Appeal Board should adopt its own rules and form of appeal so as to bring before it all the facts that any appellate tribunal should have, e.g. something perhaps very informal but corresponding in principle to the state of the case in appeals to the Supreme Court from the civil district courts. I will be very glad to have a copy of such rules as soon as your Board formulates and promulgates the same so as to answer the increasing volume of inquiries which are steadily coming in to my office as to the necessary forms and procedures.

I also have 30 or 40 inquiries, some of which have come to me direct, and some to your Board which have been remailed as aforesaid by the Post Office authorities. In each instance I am referring them to your Board.

Respectfully yours,

D. Frederick Burnett,  
Commissioner.

January 9, 1934

#2.

Mr. Stanley L. Gedney, Jr.,  
525 Main Street,  
East Orange, N. J.

Dear Mr. Gedney:

Governor Moore has referred to me for reply your telegram reading:

"I represent an East Orange restaurant which desires to appeal from refusal of local license board to the Board of Appeals appointed by Alcoholic Beverages Act Stop License conditions are critical in East Orange Stop Please advise if on waiver by response of prescribed notice an early hearing which is of utmost importance to my client can be had."

There is nothing in the law which gives the Alcoholic Beverage Appeals Board any express authority to waive the prescribed statutory notice nor do I see any valid reason why the five days' notice of the date fixed for hearing before this Board should be waived. The statute wisely confides to each municipality the right to decide for itself in the first instance whether or not a given retail license shall be issued in that community. If that power should be abused, either by granting the application when it ought not or by refusing to grant it when it ought, an appeal should and

will lie to the Appeal Board. Presumptively, the action of the local body is correct and the burden of proof should be on the appellant to establish by fair preponderance of evidence that the local power was abused. It follows that it is just as important to the municipality and to the individual proponents or opponents of the application, as the case may be, that they have a fair hearing on the appeal as well as that the right to appeal be afforded to your client. Hence the Appellate Board has no right whatsoever to waive notice or shorten the time of notice. The respondents should have a reasonable time to prepare their case to sustain the original ruling if they can and five days notice is none too great.

Your case is to be distinguished from the question as to what, if any, powers the Appellate Board may have in respect to suspending, prior to hearing on appeal, the operative effect of a revocation. In analogy to the principles applied by our Court of Errors and Appeals in suspending in their absolute discretion the immediate operative effect of a decree of the Court of Chancery which the decree otherwise would have, where the decree if carried into effect before such hearing would destroy the very subject matter of the appeal and render the final decision merely academic and actually nugatory in practical effect, it may well be, in such case, if such facts appear and are sufficient to warrant the application of such principle, that the Appellate Board will decide that it has inherent power to preserve the subject matter of appeal. That, however, is not your case.

Your only remedy is to file your appeal with the Board of Alcoholic Beverage Appeals directed to the Governor as Chairman thereof, addressing it to the State House, Trenton, N. J., and in due course your clients will be given the statutory right of review by that Board.

The statute provides that the Board shall establish its own procedure and rules.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

#3

HOFFMAN  
Beverage Company

400 Grove Street,  
Newark, N. J.  
December 28, 1933.

D. Frederick Burnett, Commissioner,  
New Jersey Alcoholic Beverage Control Board,  
744 Broad Street,  
Newark, N. J.

Dear Sir:

As you may know, the Hoffman Beverage Company is constructing a brewery at the present time. The brewing system which will be used is different from that employed by the usual brewer and it is necessary for us to conduct certain

experiments before the brewery is actually in operation. It is expected that the main plant will not be ready for production until early spring.

In order to carry out the preliminary experiments, a small pilot or experimental plant with a capacity of about 32 barrels per month is being constructed in one of our present buildings. We desire to operate this small experimental plant as soon as it is completed, that is, about the early part of next week, and to use the results of this experimental work in the brewing of beer in the main brewery when that is ready a few months hence. The beer which would be produced in this small experimental plant would be used in making laboratory tests. If possible, we would like, as part of our experiments to distribute part of the product to a limited number of persons in order to get the reaction of the consumer to the type of beer produced. Of course, any such distribution would not be with the idea of making a profit but would be merely a part of our research and experimental work.

We would appreciate very much an early ruling from you concerning the requirements of your Board in the matter of the operation of this experimental plant.

Yours very truly,

HOFFMAN BEVERAGE COMPANY.  
(Signed) Edwin L. Gidley,  
Attorney.

January 2, 1934

Hoffman Beverage Co.,  
400 Grove Street,  
Newark, N. J.

Attention Edwin L. Gidley, Esq.

Gentlemen:

I have yours of the 28th.

The situation set forth comes fairly within Section 75 of the Control Act in that it is a contingency not expressly provided for by the Act but is consonant with its spirit. The situation is quite different from those cases where an attempt is made to create a new class of licenses in addition to those ordained by the Legislature.

In the instant case the application is for a permit to carry out certain experiments reasonably necessary and incidental to the operation of the brewery as a going concern.

I am therefore willing to entertain an application from you for a special permit to operate experimentally for a period of not more than one month, on condition that the beer produced, while it may be given away for testing purposes and to obtain consumers' reactions, shall not be sold.

Enclosed herewith is form of application for brewery permit. This application must be completely made out and accompanied by affidavit setting forth the substance of your letter and all other necessary detail. The experimental permit will cost \$10.00. If good cause is shown it may be renewed for another month upon payment of an additional fee. Permission, if granted, will be subject to such conditions and safeguards as may appear proper when the complete papers are presented to me. It will, of course, be subject to such taxes as may be imposed by the State Tax Commissioner.

The application must be accompanied by Federal tax stamp or waiver signed by a duly authorized official of the Federal Government, also Federal Brewer's Permit.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

#4.

January 11, 1934

Hon. George B. LaBarre, Mayor,  
Trenton, New Jersey.

Dear Sir:

I have your telegram of even date reading:

"Is not the provision no hearing need be held if no such objection shall be lodged contained in Paragraph Ten Bulletin Number Nine an error Stop Section Twenty One Alcoholic Beverage Act specifically provides that it shall be the duty of each other issuing authority to conduct public hearings on applications and revocations."

I appreciate this for if error had inadvertently been made, I would be only too glad to learn and correct it.

The language, however, to which you refer in paragraph 10 was used advisedly. The object was, not to suffer the statutory advertisement of notice of intention to apply for a license to lapse into a mere gesture or technicality, but rather to make the advertisement a medium through which all bona fide objectors would know against whom, and when, where and how to make known their objection and thereupon to afford them a fair hearing. I believe the rules recently

promulgated accomplish just that. If not, I'll change them to do so.

The part of the paragraph to which your telegram adverts reads:

"No hearing need be held if no such objection shall be lodged or if the issuing authority on its own motion shall after the requisite statutory investigation, have determined not to issue a license to such applicant".

This covers the situation exactly, for (1) if there be no objection, there is no necessity of a hearing; (2) if the issuing authority, after investigating the applicant, disapproves his application nothing is to be gained by hearing additional objectors. As for such applicant himself, his remedy is not a hearing, but like every other case of a rejected application, an appeal to the State Board of Alcoholic Beverage Appeals.

It is true that Section 21 makes it the duty of municipal issuing authorities "to conduct public hearings on applications and revocations". This I construe to mean that whenever a public hearing is required by the Control Act, it is the duty of such municipal authorities to conduct it. Applicants for license have no right to be heard unless there are objections. To construe the act otherwise, would place an intolerable administrative burden upon such officials. They may do so if they wish but the rule says that they need not. If their investigation warrants the conclusion that the application should be denied, his plain remedy is to appeal as aforesaid. Objectors, on the other hand, are entitled to a hearing. Whenever anyone is entitled to a hearing, then, but not until then, does it become the duty of municipal officials to conduct any hearing.

Thanking you very much for calling this to my attention, I am

Very truly yours,

(signed) D. Frederick Burnett,  
Commissioner.

#5

January 11, 1934.

In response to a telegram reading:

"Does an ex service man have to pay a retail liquor dealers license Stop I know there is a free veterans license for other lines of business."

The Commissioner ruled that the ex service man would have to pay for such license because of the Control Act, Section 24, which provides:

"Any statute or exemption to the contrary, notwithstanding, no license shall be issued to any person except upon payment of the full fee therefor."

D. Frederick Burnett,  
Commissioner.

#6      Ruling by the Commissioner.      January 10, 1934.

A temporary license was issued to an individual. He now states that he purposes to form a corporation and desires to know whether the permanent license may not be issued in the name of the corporation.

The Commissioner ruled that a corporation is a different person in the law from the people who compose it, and therefore to issue the permanent license in the name of the corporation would in effect constitute a transfer of license which is forbidden by the Control Act.

D. Frederick Burnett,  
Commissioner.

#7      January 2nd, 1934.

Mr. D. Frederick Burnett,  
State Beverage Commissioner,  
744 Broad St.,  
Newark, N. J.

My dear Mr. Burnett:-

As Vicar General of the Roman Catholic Diocese of Newark, I am approaching you with reference to the distribution of Sacramental Wines under the new State Law.

According to the regulations of our Church to insure the absolute canonical purity of Sacramental Wine and freedom from all adulteration, our clergymen are not permitted to secure their wine except from vineyards which are under ecclesiastical supervision. The distributors, if they themselves are not vineyard owners, must likewise give evidence that they have secured their wines from supervised vineyards and cellars.

As it will be practically impossible for the clergy and for us in our position to exercise such supervision over retailers, we ask that steps be taken to permit as

heretofore, our clergy to secure the wines for Sacramental uses from approved vineyards and distributors, and that in the enactment of legislation bearing on this subject, to consider the point too what for us is a matter of conscience. Besides, hitherto, the wine has usually been delivered in barrels as well as bottles, and we would like this custom to be likewise continued. May we not, accordingly, ask your kind interest and intervention to see that these aims are achieved?

Thanking you in advance and wishing you a very happy New Year, I remain,

Sincerely yours,  
(Signed) Thomas H. McLaughlin  
Rt. Rev. Msgr. Thomas H. McLaughlin,  
Vicar General

January 12, 1934.

Rt. Rev. Msgr. Thomas H. McLaughlin,  
Vicar General, Diocese of Newark,  
Chancery Office,  
31 Mulberry Street,  
Newark, N. J.

My dear Vicar General:

I have read your letter of the 2nd with sympathetic interest.

Sacramental Wines through the centuries have been a universal symbol of veneration for the past and of the hopes of mankind for the future in all religions. Even to mention this in connection with the sale of alcoholic beverages seems to profane what everyone esteems sacred. There is no question of the proper use. The duty of the State is to guard against abuse.

The case comes squarely within the spirit and intentment of Section 75. Special permits will, therefore, be issued to such manufacturers and wholesalers licensed in New Jersey as you shall certify to me are able and willing to deliver to your churches Sacramental Wines of assured purity. These permits will entitle such nominees to sell and deliver Sacramental Wines only to such churches and in such quantities as shall be specified by you from time to time. The vendor, who otherwise would not be able to sell directly to its consumer, will be required to make full report to this office of all such sales and deliveries, which can then be checked and verified by you and me jointly. The special permit will cost each licensee \$10.00 and will be good until the end of the current fiscal year. It will be instantly revocable for violation of the conditions. The permit will not be to sell such wines generally, but only as so certified.

Needless to say, the same privilege will be accorded, upon request, to all other religious bodies.

Sincerely yours,

D. Frederick Burnett,  
Commissioner.



#8

T. F. RODDEN AGENCY, INC.  
of  
The Covick Company, Inc.,  
Pure Altar Wines  
25 Barclay St.,  
New York City.

December 15, 1933.

State Alcoholic Beverage Control Board,  
Trenton, N. J.

Gentlemen:

For a great number of years we have sold Sacramental Wine to the Catholic Churches in the State of New Jersey.

We are now operating on a New York State Wholesale Wine License, and would appreciate learning what steps we should take to continue selling our customers in your State.

Very truly yours,

T. F. RODDEN AGENCY, INC.

(signed) S. A. Rodden

P. S. If Wine shipped by us from New York thru a Bonded Truckman and a N. J. State Tax is paid by the consignee is that satisfactory?

January 12, 1934.

T. F. Rodden Agency, Inc.,  
25 Barclay Street,  
New York City.

Gentlemen:

I have yours of the 15th ult. re Sacramental wines.

Herewith copy of my letter of even date to Vicar General McLaughlin which will give you the detail of procedure. In brief it will be necessary:

1- For you to take out a New Jersey Wholesaler's License;

2- To be certified to me by some recognized religious body as a vendor of such products as are desired for altar purposes;

3-v To obtain a special permit permitting you to sell direct to the consumer which ordinarily is denied wholesalers, but conditioned and revocable if you sell to anyone other than the consumers especially to be set forth in the permit.

Wines shipped by you from New York through a bonded truckman is contrary to law and will subject all such shipments to seizure. The Control Act expressly provides that every delivery of an alcoholic beverage constitutes a sale for the purposes of the Act. The Act provides that no sales may be made by anyone in New Jersey who is not licensed.

Very truly yours,

D. Frederick Burnett  
Commissioner.