

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 69

April 11, 1935

1. REFUNDS - AFTER REFERENDUM - NONE PAYABLE UNDER REFERENDUM
CANCELLING PERMISSION TO SELL FOR ON-PREMISES CONSUMPTION

REFUNDS WHEN LICENSE PRIVILEGES ARE LESSENERED - NONE PAYABLE
FOR MERE CIRCUMSCRIPTION OF PRIVILEGES

LICENSES - SURRENDER - LICENSE MAY BE REINSTATED WHEN SURRENDER
WAS MADE BY HONEST BILATERAL MISUNDERSTANDING

March 25, 1935

My dear Commissioner:

In re: Downe Township

I am enclosing a copy of a resolution adopted at the regular
meeting of the Township Committee held Thursday, Mar. 21, 1935.

On November 7, 1934 I wrote you giving you the results of a refer-
endum held in this Township the previous day, asking your instruc-
tions concerning the refund of the license money.

These instructions were received under date of December 18th and
the prorated balance of the fees of the two license holders re-
turned in accordance therewith. This money was accepted in both
cases and the cancelled check returned to our treasurer.

I now see in your bulletin #65 of March 7, 1935 in section 11
that you inform Mr. Zeh Dennis that his license is still in effect
as regards the Distribution portion.

Will you kindly check this matter over further and advise as to
whether the return and acceptance of this license fee has not
voided in its entirety the license previously held by Mr. Dennis.
It might be added that Mr. Dennis is no longer in control of the
property which was covered by his license #C2 which may also have
a bearing on your decision. Kindly rule on both phases as only
the returned money applies to the holder of license C1.

There is no wish on the part of the Township Committee to discrim-
inate against Mr. Dennis or any other person as I feel sure that
the application of Mr. Dennis will be given every consideration
if presented in due form.

Kindly answer at your earliest convenience so that proper action
may be taken by the Committee and the applicants be granted their
licenses as soon as possible.

Very truly yours,
H. L. BAILEY
Township Clerk

April 8, 1935

Mr. Harold L. Bailey,
Clerk of Downe Township,
Dividing Creek, N. J.

Dear Sir:

I have your letter of March 25th.

New Jersey State Library

Of course, on March 7, 1935, when I wrote to Mr. Dennis I was not aware that his license had actually been surrendered and that refund had been accepted by him.

The instructions for refund (Bulletin 58, item 14) applied only to those licenses which had become completely void and inoperative because of the referendum. Hence, when Mr. Dennis surrendered his plehary retail consumption license which he was not forced to do by the referendum, the refund rule of Bulletin 58, item 14 was not applicable and the refund should have been made according to Section 28 of the Act which requires the deduction of a surrender fee of fifty per cent of the license fee originally paid from the prorated fee representing the unexpired term.

It thus appears that by mistake he has been paid too much on his refund.

It also appears that Mr. Dennis himself made a mistake in assuming that his license became void in its entirety. Your interpretation of Bulletin 65, item 11 is correct. The distribution portion of his license would be still in full force and effect if it had not been for the surrender he made of this whole license.

The surrender of his license appears to have been the result of an honest misunderstanding on the part of both the Township Committee and Mr. Dennis as to the effect of the referendum. I therefore rule in this case that both mistakes above pointed out may be corrected in manner following: (1) that Mr. Dennis repay to the Township the entire amount of the refund previously paid him and (2) thereupon the Township Committee annul the surrender and re-instate his license. He will then be free to exercise his original license to the extent permitted by the referendum and the propriety of the refund previously granted will be of no further moment. The same ruling applies to the other consumption licensee you mention, provided the circumstances are similar.

Mr. Dennis may, perhaps, contend that since the referendum deprives him of the privilege of selling for consumption on the premises, he should receive a rebate to that extent to compensate him for the loss of that privilege. There is much to be said in his favor on this point as a matter of fairness, but the unsurmountable difficulty is that there is no way to apportion the loss of the privilege and measure its extent in terms of license fees. The law does not fix any relation or proportion of the consumption feature to the distribution feature. The first impulse to say that they are "fifty-fifty" and hence if one is taken away by referendum half of the fee should be rebated is specious because the law does not require that the fee for a consumption license which embraces both features shall be twice the fee for a distribution license which has but the one privilege. It is not only possible, but some municipalities actually have fixed each fee at the same figure. It is legal, although not logical, if they fix the distribution fee twice the consumption license fee.

Moreover, all licenses are mere privileges and subject at all times to the police power of the State. Every State rule and every approved municipal regulation narrows the privilege to some extent and, when enacted subsequent to the issuance of a license, takes away something from the privilege as originally granted. But for such detraction from or contraction of a license, no recompense is payable nor is refund allowable. I have gone as

far as possible along this line in allowing full proportionate rebate when a license is entirely wiped out by referendum, e.g., a club license. But none is allowable merely because Sunday selling is taken away. If any part remains after a referendum the licensee may exercise it but may claim no rebate. It is only when he wholly surrenders his license or his license is wholly taken from him by referendum that there is room for rebate.

Therefore, if the license of Mr. Dennis is re-instated, it must be without any rebate whatsoever.

Although Mr. Dennis is no longer in possession of the original licensed premises, his license may be re-instated, if your Township Committee consents to transfer the license to a new licensed premises in accordance with Section 23 of the statute.

The resolution determining that plenary retail distribution licenses shall be issued in Downe Township passed by the Township Committee on March 21, 1935 is approved as submitted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

2. REFUNDS - AFTER REFERENDUM - WHEN ALL PRIVILEGES UNDER LICENSE ARE TERMINATED

It is apparent upon reading item #1 of this Bulletin that the caption of item #14 of Bulletin #58 was too broad and it has therefore been amended to read: "Refunds - After Referendum - When All Privileges Under License Are Terminated."

The ruling in Bulletin #58, item #14, as appears by its terms and by reference to Bulletin #69, item #1, applies only to cases where licenses have become wholly void and inoperative because of a referendum. It has no application where some privileges remain under the license. A licensee is not entitled to any recompense in such case. In re Downe Township, Bulletin #69, item #1.

A licensee may, of course, surrender his whole license under Section 28, but then he is entitled only to the statutory return.

The amended caption of Bulletin #58, item #14, it is believed, will aid in confining its application to the cases intended.

3. MUNICIPAL ORDINANCES - SUMMARY PUNISHMENT OF VIOLATIONS DECLARED OFFENCES BY THE STATUTE

(Note: Previous decisions dealing with this subject are set forth in Bulletin 28, item 2 (8); 43-5; 43-6; 43-7; 52-1; 52-2; 53-9 and 55-6.)

The proposed amendment to Section 2 of the ordinance of the City of Orange reads:

"Section 2. Any person who shall manufacture, sell, distribute, bottle, blend, rectify, treat, fortify, mix, process, warehouse or transport or carry by any method any alcoholic bever-

ages except in conformity to any Statute of the State of New Jersey now in effect, or which may hereafter be adopted, or who shall own, possess, keep or store in said City of Orange any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages, except in conformity to any Statute of the State of New Jersey now in effect, or which may hereafter be adopted, or to aid or abet another in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing and transportation of alcoholic beverages except in conformity to any Statute of the State of New Jersey now in effect, or which may hereafter be adopted, shall be subject upon conviction to a fine of not less than One Hundred (\$100.00) Dollars and not more than Five Hundred (\$500.00) Dollars or imprisonment of not less than thirty days or not more than six months or by both; such fine and imprisonment to be in the discretion of the Court."

March 26, 1935

My dear Commissioner:

Re: City of Orange

With reference to Section 2, it is my understanding, as confirmed by my telephone conversation with you of today, that we both agree that it probably will be a good idea if there can be a judicial interpretation of our right to have a City Ordinance providing for penalty for violation of the same acts as are outlined in the State statute. In other words, I understand that we both agree that there may be some question as to the validity of this section but it is worth trying out.

Very truly yours,
E. R. McGLYNN
City Counsel

April 8, 1935

Edward R. McGlynn, Esq.,
Newark, N. J.

Dear Sir:

Re: City of Orange

I have yours of March 26th and the proposed amendment to your ordinance entitled "An Ordinance to regulate the sale and distribution of alcoholic beverages and prescribing penalties for violations of rules and regulations of the Municipal Board of Alcoholic Beverage Control", adopted August 17, 1934.

I am willing that you should adopt Section 2 of the proposed amendment as written in order to test its validity in the courts even though we both agree, as confirmed by yours of March 26, 1935, there is grave question because it purports to adjudicate upon violations of the Alcoholic Beverage Control Act which are misdemeanors and hence are not within the jurisdiction of your local magistrates. It will, therefore, be approved as submitted, subject to later action by me dependent upon adjudication of the matter by the courts.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

4. MUNICIPAL ORDINANCES - FEMALES - BONA FIDE HOTELS AND RESTAURANTS MAY BE PROPERLY EXCEPTED FROM REGULATION PROHIBITING EMPLOYMENT OF FEMALES PROVIDED EXCEPTION IS STRICTLY ENFORCED AND APPLIES ONLY TO BONA FIDE HOTELS AND RESTAURANTS WHERE SALE OF ALCOHOLIC BEVERAGES IS A MERE INCIDENTAL BUSINESS

April 8, 1935

Mr. William A. Polhemus,
Township Clerk,
Hanover, N. J.

Dear Sir:

I have five resolutions adopted by your Township Committee.

There may be room for question of Section 3 of Resolution #1 on the ground of discriminating between members of the same license class by reason of the exception, from the requirement that all licensed premises be open to public view, in favor of clubs and fraternal organizations, for it does not except club licensees, but clubs and fraternal organizations regardless of the class of license held. However, the distinction is made on reasonable grounds and may, therefore, be valid as a measure based upon the municipality's inherent police power. Hence, in accordance with the principles set forth in Bulletin 43, item 12, the regulation is tentatively approved.

And so, for the same reasons, I tentatively approve Section 4, which excepts bona fide hotels and restaurants from a regulation prohibiting the employment of females or the sale of alcoholic beverages to females at bars by plenary retail consumption licensees. But this exception must be strictly enforced and shall apply only to bona fide hotels and restaurants where the sale of alcoholic beverages is a mere incidental business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

5. MUNICIPAL ORDINANCES - ORDINANCE MAKING THOSE WHO VIOLATE THE PROVISIONS OF THE CONTROL ACT DISORDERLY PERSONS AND PROVIDING PUNISHMENT - APPROVED

April 8, 1935

Harvey V. O. Platt, Borough Clerk,
Carteret, N. J.

Dear Sir:

I have before me "An ordinance to define a disorderly person and to set the penalties therefor", adopted by your Borough Council on March 7, 1934 reading:

"WHEREAS, by virtue of an act of the legislature entitled 'An act concerning alcoholic beverages', certain resolutions were passed and adopted by the Mayor and Council of the Borough of Carteret, regulating the issuance of such licenses and regulating the operation of such licensed premises, and

"WHEREAS, it is the desire of the Mayor and Council to set penalties for the violation of the said act and/or the resolutions of the Mayor and Council adopted pursuant thereto, and therefore,

"BE IT ORDAINED, by the Council of the Borough of Carteret:

1. That any person, firm or corporation who violates the provisions of the said act entitled "An act concerning alcoholic beverages", chapter 436, laws of 1933, and/or the resolutions adopted pursuant thereto by the Council of the Borough of Carteret, and/or any part of said Act, and/or any part of the said resolutions, shall upon conviction before the Police Justice of the Borough of Carteret and/or the Recorder or any person legally acting in the place or stead of said Police Justice and/or Recorder be adjudged a disorderly person and fined in accordance with section 2 hereof.
2. Upon a first conviction, he, she or it shall pay a fine of fifty dollars and/or be sentenced to five days in jail; upon conviction of a second offense, he, she or it shall pay a fine of one hundred dollars and/or be sentenced to thirty days in jail; and upon a third conviction shall pay a fine of one hundred and seventy-five dollars and/or be sentenced to a term of ninety days in jail; and for each continuing day for which said violation shall occur, shall be subject to a fine of one hundred and seventy-five dollars.
3. Should any part, section or provision of this ordinance be questioned in any court, and held to be invalid or ineffective in whole or in part, such holding shall not affect any other part, section or provision of this ordinance except so far as the section or portion so declared to be unconstitutional, ineffective or invalid, shall be inseparable from the remainder or any portion thereof.
4. This ordinance shall take effect immediately."

It is approved as submitted, subject to later action by me dependent upon adjudication of its validity by the courts.

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

6. MUNICIPAL ORDINANCES - REQUISITES AND VALIDITY - REFERENCE TO PREVIOUS ORDINANCE - HEREIN OF LIMITATION OF LICENSES BY ELECTION DISTRICTS

April 8, 1935

C. Alfred Wilson, Esq.,
Mountain View, N. J.

Dear Sir:

Re: Township of Wayne

I have two resolutions passed by your Township Committee

pursuant to the Alcoholic Beverage Control Act as amended and supplemented:

1. Dated June 12, 1934 fixing the plenary retail consumption license fee and regulating the sale of alcoholic beverages, as amended by
 2. Dated December 11, 1934
- and
3. An ordinance dated December 9, 1930 to license and regulate certain places within the Township of Wayne wherein food or drink or both are sold to be consumed on the premises, as supplemented December 8, 1931.

They are approved as submitted with the following exceptions:

Section 3 of the resolution of June 12th, as amended December 11, 1934, requires of applicants for plenary retail consumption licenses that the premises to be licensed be first licensed pursuant to "An Ordinance to regulate certain places within the Township of Wayne in the County of Passaic wherein food or drink or both are sold to be consumed on the premises" adopted December 9, 1930 as amended and supplemented, and constitutes violations of said ordinance as grounds for revocation of the plenary retail consumption license.

I have examined that ordinance and the supplement. By its terms it requires licensing thereunder of all public restaurants, dining rooms, grills, bars, cafes, saloons, rooms, cars, wagons and such other places wherein food or drink or both may be sold for consumption on the premises, with the exception of those places selling soda water and ice cream exclusively and boarding houses. It exacts a license fee of \$25 and an additional fee of \$5 to cover the cost of advertising the public hearing upon the license application. It regulates the conduct of businesses licensed thereunder and the nature and condition of the licensed premises. It imposes penalties for violation.

Irrespective of the fact that it was enacted prior to the Alcoholic Beverage Control Act and therefore cannot be said to have been enacted pursuant thereto, there can be no doubt, inasmuch as licensing thereunder is required of all applicants for plenary retail consumption licenses, that it now regulates the sale of alcoholic beverages. And while the ordinance does not declare that it is adopted for revenue purposes, a license fee of \$25 and additional costs of \$5 are assessed.

Insofar as that ordinance affects applicants for plenary retail consumption licenses, I cannot approve those additional license fees for such applicants could then be charged in excess of the statutory maximum for their licenses. The Legislature says that the maximum a municipality can charge for this license is \$2000. If the fees fixed in the ordinance are valid, you could charge \$2030 to exercise the privilege. That cannot be. The applicant may not be required to pay more for his license than the statute authorized the municipality to collect.

Section 7 of the ordinance provides "No license shall be issued for any public place wherein intoxicating liquor is sold"

and I have nothing on record indicating that this has ever been altered or amended. But the resolution requires licensing under the ordinance before a plenary retail consumption license may be granted. And inasmuch as the ordinance expressly prohibits the licensing thereunder of such businesses, it follows that the condition you have imposed upon plenary retail consumption licenses could not possibly be fulfilled.

That ordinance and its supplement and Section 3 of the resolution of June 12, 1934 are therefore disapproved.

The proposed ordinance No. 6 "To license and regulate certain places within the Township of Wayne in the County of Passaic wherein food is sold to be consumed on the premises", which according to your letter of March 21st is designed to replace the ordinance of December 9, 1930 and its supplement of December 8, 1931, appears to remedy the situation. While it still includes restaurants, grills, bars, cafes, and saloons within its licensing scope, its purpose is expressly limited by its terms to the licensing of premises wherein food is sold to be consumed thereon. Hence, I do not see why it cannot exist independently of resolutions or ordinances regulating the sale of alcoholic beverages.

With the repeal of the ordinance of December 9, 1930 and its supplement of December 8, 1931, Section 3 of the resolution of June 12, 1934 should likewise be repealed.

Insofar as it restricts the three licenses to be granted to one in each of the Township's three election districts, I cannot approve for election districts are not proper sub-divisions upon which to base the distribution of licenses. The boundaries of such districts are flexible and shifting population may require that they be changed. The rule is easy to apply when the first three licenses are issued, but what will happen if redistricting places two licensees in the same election district? Will one be forced out of business, even though fully qualified or will he be required to transfer his licensed premises, in spite of all the efforts he may have made to build up a substantial trade in his present location and in spite of the investment he may have made in his licensed premises? I suggest that Section 5 (b) be amended specifically to state the boundaries of the three contemplated districts.

Section 6 of the resolution of June 12, 1934 is disapproved. It reads: "The Township Committee reserves the right to refuse a license for any building or premises not operated as an established restaurant or dining place or for any building or premises operated in close proximity to a bathing beach or to a place of amusement." As worded, it includes within the right to refuse licenses reserved therein all licenses which may be issued under the resolution. I doubt that it was the intention of the Township Committee so to include plenary retail distribution licenses, for the fact that an applicant for such license did not conduct an established restaurant or dining place could not possibly be reasonable grounds for refusal. I suggest that the Section be amended first to include within its operative scope only plenary retail consumption licenses and secondly, inasmuch as it is the intention of the Township Committee to restrict the issuance of consumption licenses to places where restaurants are maintained and to prohibit saloons that, rather than reserve the right to refuse such licenses for premises not operated as an established restaurant, the aforesaid policy be formally adopted and consistently maintained. You will then be

saved any future objections which may justly be made if, pursuant to the Section as presently worded, licenses were granted to some applicants who do not conduct a restaurant and were refused to others. The same precaution should be taken with respect to the discretion reserved in the issuance of licenses for any building or premises operated in close proximity to a bathing beach or a place of amusement. I cordially suggest that here also the reserved discretion be removed and that the policy be definitely adopted or abandoned as the Township Committee may decide.

With Sections 3 and 6 amended as aforesaid, the present repugnancy between these two sections will no longer exist. As they now stand, Section 3 requires of all applicants for plenary retail consumption licenses that they be first licensed as a place wherein food or drink or both may be sold to be consumed on the premises. Section 6 implies that such licenses may be issued in the discretion of the Township Committee for premises not operated as restaurants or dining places. The implied reservation of discretion in Section 6 appears to be without any force or effect because of the express requirement in Section 3 to the contrary.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

7. SPECIAL PERMIT - DONATION OF ALCOHOLIC BEVERAGES BY WHOLESALER -
SPECIAL PERMIT NECESSARY

SPECIAL PERMIT - SOCIAL ORGANIZATION GIVING ALCOHOLIC BEVERAGES
AS PRIZES NEEDS SPECIAL PERMIT

Gentlemen:

Guiding Star Lodge No. 189, I.O.O.F. has planned a Card Party to be held on April 9, 1935 at the above Hall. We are asking various concerns in the neighborhood for donations to be used as card prizes. Among our requests was one to a Wine and Liquor Wholesale Dealer. As this affair is for a charitable purpose they would like to contribute some of their wares which we will give out as prizes but do not care to endanger their license by so doing.

They have advised me to get in touch with you to find out if it is necessary to have a permit for that evening. We are not going to sell or give same out as a refreshment but just to be used as a Card Party prize.

Will you please advise us what steps to take in order to make it known to the Wine and Liquor Corporation that a permit is unnecessary, if that be the case.

Yours very truly,
C. A. BOERENSEN
Secretary and Chairman of
the Committee

April 8, 1935

C. A. Boerensen, Chairman of Committee,
Guiding Star Lodge, I.O.O.F.,
Hoboken, N. J.

Dear Sir:

Your letter received, wherein you inquire whether a New

Jersey wholesaler may donate alcoholic beverages to your organization to be used as prizes at your purposed card party.

The Alcoholic Beverage Control Act defines sales as "the gratuitous delivery or gift of any alcoholic beverage by any licensee". A donation of alcoholic beverages by a licensee, therefore, constitutes a sale. Under the terms of his license a wholesaler may not sell directly to consumers. Your organization is in effect a consumer, hence the wholesaler may not present any alcoholic beverages by way of gift regardless of the purpose for which you intend to use them.

By the ruling of the Commissioner, however, a wholesaler may sell alcoholic beverages to the holder of a Special Permit. If your organization obtains such a permit from the Commissioner the wholesaler may then donate alcoholic beverages for prizes.

Furthermore, in the event an admission is charged or tickets sold to the card party, alcoholic beverages given as prizes constitute a sale thereof. In such case, it would be necessary for your organization to obtain a special permit before it could legally give liquor as prizes. The permit, if granted, would authorize not only the receipt of the donation from the wholesaler but also the right to give such beverages as prizes.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

8. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER

1. No manufacturer or wholesaler shall, in any one license year, furnish or deliver to any retail licensee, directly or indirectly, by sale, loan, gift or otherwise, any signs or other advertising matter, the aggregate cost or reasonable value of which exceeds \$100.00 with respect to each licensed premises, and no retail licensee shall permit or suffer the display of any signs or other advertising matter furnished or delivered in violation of this regulation.

2. No retail licensee shall permit or suffer the display, on the exterior of the licensed premises, of any signs or other advertising matter bearing the name, brand or trade-mark of any manufacturer or wholesaler of any alcoholic beverage.

3. No licensee authorized to sell alcoholic beverages at retail for consumption on the licensed premises shall, directly or indirectly, advertise, or permit or suffer the advertising of, the price of any alcoholic beverage or size of the container thereof, on the exterior of the licensed premises, or in the show-window or door thereof, or in the interior thereof when visible from the street.

4. No retail licensee shall permit or suffer in or on the licensed premises any sign or other matter advertising the sale of any particular brand or type of alcoholic beverage unless such brand or type of alcoholic beverage is actually available for sale at such premises.

5. Any signs or other advertising matter in possession of a retail licensee and located on the licensed premises on the date hereof may be retained for a period of sixty (60) days, but must be dismantled and removed from the licensed premises at or prior to the expiration of said period in all cases where their con-

tinued possession would violate any of the foregoing regulations.

6. Violation of any of the foregoing regulations shall be cause for revocation of the license.

The foregoing rules are effective immediately.



Dated: April 9, 1935

Commissioner

9. MUNICIPAL ORDINANCES - PENALTIES - MAXIMUM AND MINIMUM PENALTIES

Gentlemen:

You very kindly gave me a sample of Municipal Ordinance (Bulletin 53, Item 9) that might be considered in the preparation of an Ordinance for the Township of Hillside with regard to fixing license fees for the sale of alcoholic beverages in the Township.

I note that your penalty provision proposes to have a minimum and maximum penalty. I realize that Sections 47, 48 and 49 of the Act deal with minimum and maximum penalties, but these penalties undoubtedly are penalties that are collected by the State in case of violations, and not for the violations of local ordinances. I assume that the general power of the Municipality to fix penalties is the authority for the penalties to be included in an ordinance. The Home Rule Act provides that the governing body of every municipality may prescribe a penalty for violation of any ordinance either by imprisonment in the County Jail not exceeding 90 days, or a fine not exceeding \$200 or both. Our Courts have repeatedly held that an ordinance fixing a minimum penalty is defective. The ordinance can only prescribe the maximum penalty and leave the penalty to be determined by the Magistrate. One of the cases in point is the case of Friedman v. Mains, 8 Misc. 703.

I am wondering if you have taken this into consideration. I am inclined to believe that it would be better for us to place only a maximum penalty as authorized in the Home Rule Act, rather than adopt the penalty provisions fixed in the Law, which are penalties that would be paid to the State for violations.

I would greatly appreciate if you would let me have your comment on this matter.

Very truly yours,
S. A. EMERSON
Hillside Township Attorney

April 9, 1935

Whittenmore & McLean,
Elizabeth, N. J.

Att: Sigurd A. Emerson, Esq.
Re: Township of Hillside

Gentlemen:

As was said in Bulletin 53, Item 9, the sample form of

municipal ordinance was devised in order that municipalities could have a draft upon which to build as their own individual conditions and requirements demanded. It was neither prescribed nor recommended but, as indicated, merely examples of provisions which had theretofore been approved by the Commissioner, set forth for the convenience of municipalities in formulating their own regulations.

I have examined the Home Rule Act and the case of Friedman vs. Maines, 8 N.J.Misc. 703 (Sup. Ct. 1930) aff'd 110 N.J. L. 454 (E. & A. 1933) and find that both bear out your contention that your ordinance should carry only the maximum penalty. Accordingly, if the statutes which govern your municipality inhibit the stipulation of mandatory penalties, the minimum penalties as set forth in Section 5 (a) and (c) of the sample ordinance should be omitted from yours.

In fact, there being no authority granted by the Alcoholic Beverage Control Act in the fixing of penalties to be imposed pursuant to municipal ordinances, all municipalities in providing for such penalties should be governed by the statutes relating to their respective municipalities.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

10. MUNICIPAL ORDINANCES - SAMPLE FORM

Annotation should be made to Bulletin 53, Item 9, on page 10, opposite Sections 5 (a) and (c) (which prescribe maximum and minimum penalties) of the principles set forth in Bulletin 69, Item 9.

11. GOVERNING BOARD OR BODY - WHAT CONSTITUTES - THE ELIZABETH SITUATION

April 9, 1935

Municipal Board of Alcoholic Beverage Control,
Elizabeth, N. J.

Gentlemen:

The Supreme Court has ruled, as I presume you know, that under section 1 (g) and 5 of the Control Act your Board is the proper issuing authority for the City of Elizabeth. Therefore, I shall recognize you as the exclusive issuing authority hereafter. The stipulation entered into between your Board and the Board of Public Works pending the determination of this matter by the Supreme Court is terminated.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

April 9, 1935

Board of Public Works,
Elizabeth, N. J.

Gentlemen:

Herewith carbon of my letter of even date to the Municipal

Board of Alcoholic Beverage Control.

Unless you appeal from this decision, it will be accepted by me as final.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

12. BULLETIN ITEMS SUPERSEDED

Bulletin 35, Item 14 is superseded by Bulletin 69, Item 11.

13. LICENSEE - CHANGE OF CORPORATE NAME - NO NEW LICENSE NECESSARY
WHERE CORPORATE LICENSEE CHANGES ITS NAME - ENDORSEMENT OF
LICENSE

March 27, 1935

Gentlemen:

This company operates a liquor store at 5 South New York Avenue, Atlantic City, New Jersey under a retail distribution license granted by the City of Atlantic City.

The name Lloyd Drug Company has been objected to by the New Jersey Board of Pharmacy because of the inclusion of the word "drug" in the title unless the store is constantly in charge of a registered pharmacist. Whether or not this is so I have decided to change the name of the Company to the Lloyd Company, leaving out the word "drug".

I had our attorney in that city take the matter up with the local authorities who state that they do not know how far they can go towards issuing a new license and that they would be willing to pass a resolution permitting the license to be granted to the Lloyd Company but doubt their power to do so.

Will you kindly let me know whether or not it is necessary to issue a new license under the circumstances and what must be done by us in order to change the corporate name of the company without invalidating the license now issued to the Lloyd Drug Company.

Very truly yours,
LLOYD DRUG CO. INC.,
By: H. Rubenoff
Attorney

March 29, 1935

Lloyd Drug Co. Inc.,
New York City.

Gentlemen:

I have your letter of March 27th, inquiring whether a new license is required where a corporate licensee duly changes its corporate name. The answer is in the negative.

In legal contemplation the corporate entity which constitutes the licensee remains the same, despite a change of name.

Upon such change of name, however, the issuing authority must be notified pursuant to the requirements of section 31 and thereupon the license should be endorsed as follows:

"Pursuant to a change of corporate name,
_____ is hereby
substituted in place of the name of the
licensee heretofore appearing on this
license, subject, however, to all the
terms and conditions of this license."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

14. APPELLATE DECISIONS - ZITO VS. NEWARK

PATSY ZITO,)
Appellant)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF NEWARK,)
Respondent)

ON APPEAL
- CONCLUSIONS

Bozza & Bozza, Esqs., by Samuel D. Bozza, Esq., Attorneys for
Appellant.
Frank A. Boettner, Esq., by Raymond Schroeder, 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 101 Murray Street, Newark.

Respondent contends the application was properly denied because of the notoriously bad reputation of the premises sought to be licensed arising from the manner in which they had been conducted in the past.

Appellant's premises are located in the basement of a four-story apartment house used exclusively for residential purposes. Respondent issued a license for these premises for the period expiring June 30, 1934 and a night club was conducted therein under the name "Hot Cha Club". The place became notorious, being frequented by prostitutes and other persons of ill repute for immoral purposes. Deputy Chief of Police Sebold testified that riots, fights and all manner of disorderly occurrences resulted in numerous complaints being filed by neighbors and finally respondent revoked the license.

Thereafter several other persons not connected with the previous licensee made application for a license for these premises but all such applications were denied for the same reason respondent now asserts against appellant.

Appellant argues, however, that he has no connection with the former licensee and should not be penalized simply because said licensee had improperly conducted the premises in the past.