

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 48.

October 13, 1934

1. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES

1. No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises.

2. No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election.

3. No licensee shall directly or indirectly solicit from house to house, personally or by telephone, the purchase of alcoholic beverages, nor allow, permit or suffer such solicitation.

4. No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute.

5. No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, brawls, or unnecessary noises, nor allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance.

The foregoing rules are hereby promulgated effective immediately.

Dated: October 8, 1934.

D. FREDERICK BURNETT,  
Commissioner

2. APPELLATE DECISIONS - MANNING VS. SANDYSTON

WILLIAM MANNING,  
Appellant

-vs-

TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF SANDYSTON  
(SUSSEX COUNTY),  
Respondent.

ON APPEAL  
CONCLUSIONS

William Manning, Pro Se  
Willis H. Sherrard, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the action of respondent in denying appellant's application for a plenary retail consumption license.

Section 22 of the Control Act provides that a photostatic copy of all Federal licenses, permits and/or stamps necessary to the lawful conduct of the business or evidence in lieu thereof, satisfactory to the Commissioner, must accompany the license application, together with a deposit of the full amount of the required license fee. The evidence established that appellant had never filed a formal application with the required fee, or obtained a Federal tax stamp. Consequently no license could be issued upon the application presented by appellant. See Burd vs. Township Committee of Mine Hill Township, Bulletin #38, Item #7.

The appeal is therefore dismissed.

D. FREDERICK BURNETT,  
Commissioner

Dated: October 6, 1934

3. APPELLATE DECISIONS - STAGNETTO VS. PLAINFIELD

PAUL STAGNETTO,  
Appellant

-vs-

COMMON COUNCIL OF THE CITY  
OF PLAINFIELD,  
Respondent.

ON APPEAL  
CONCLUSIONS

John P. Owens, Esq., Attorney for Appellant  
William Newcorn, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from respondent's action in denying appellant's application for a plenary retail consumption license for premises located at 241 East Third Street, Plainfield.

Respondent contends that the application was properly denied by virtue of its resolution limiting the number of plenary retail consumption licenses in the City of Plainfield to eighteen (18), exclusive of hotels, (he does not operate an hotel) and the issuance of the allotted number. Appellant concedes the propriety and reasonableness of the numerical limit of eighteen but contends that his exclusion thereunder was the result of the arbitrary and unreasonable manner in which respondent applied the resolution to his application.

It appears that for the previous license year ending June 30, 1934, there were nineteen (19) plenary retail consumption licensees in Plainfield, but appellant had no license of any kind. In respect to the present license year, beginning

July 1, 1934, seventeen (17) such licensees applied for renewals and their applications were granted. The eighteenth consumption license was issued to an applicant who during the previous year had operated in Plainfield under a plenary retail distribution license.

Appellant claims that he should have been chosen as one of the eighteen (18) because three of those who were granted licenses had been convicted, prior to Repeal, of repeated violations of the then laws and ordinances. But it also appears that appellant himself had likewise been convicted of six similar offenses. He argued, however, that he had been convicted less often than the other three and hence that his application should have been preferred.

His proposition is untenable. The law will not apportion comparative guilt between wrongdoers. The pot will not be heard to call the kettle black. The fact that appellant was convicted six times makes him an habitual offender, and destroys his status to complain that the others are less worthy than he. As between habitual offenders, the fact that one is caught less often than the other does not establish a superior degree of worthiness.

No ruling is made as to the other three licensees upon whom appellant concentrated his fire. Their cases are not before me on this appeal.

The action of the respondent is affirmed because the appellant is not in the position of being able to attack the selection made by respondent under its numerical limitation.

D. FREDERICK BURNETT,  
Commissioner

Dated: October 6, 1934.

4. APPELLATE DECISIONS - AMERICAN LEGION VS. PALMYRA

POST FREDERICK M. RODGERS #156, )  
AMERICAN LEGION, )  
Appellant, )  
-vs- )  
MAYOR AND COUNCIL OF THE BOROUGH )  
OF PALMYRA (BURLINGTON COUNTY), )  
Respondent. )

ON APPEAL  
CONCLUSIONS

Frank A. Mathews, Jr., Esq., Attorney for Appellant  
Joseph S. Low, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the action of respondent in denying appellant's application for a plenary retail consumption license.

Section 22 of the Control Act provides that a photostatic copy of all Federal licenses, permits and/or stamps necessary to the lawful conduct of the business or evidence in

lieu thereof, satisfactory to the Commissioner, must accompany the license application. Counsel for appellant admitted that appellant had never obtained, or paid the necessary fee for, a Federal stamp. Consequently no license could be issued upon the application presented by appellant. Burd vs. Township Committee of Mine Hill Township, Bulletin #38, Item #7.

The appeal is therefore dismissed, without prejudice, however, to appellant's right to file a new application in accordance with the Act.

D. FREDERICK BURNETT,  
Commissioner

Dated: October 6, 1934

5. FERMENTED FRUIT JUICES - CIDER - LICENSE FEES

September 27, 1934

Edward W. Wise, Esq.,  
Red Bank, N. J.

Dear Sir:

I have yours of September 19th pertaining to the manufacture, sale and distribution of cider.

Any fruit juice suitable for human consumption, and having an alcoholic content of more than one-half of one per cent. by volume, is an "Alcoholic Beverage". It follows that if cider produced for sale is an Alcoholic Beverage by virtue of its alcoholic content, the manufacture of such is subject to the provisions of the Control Act and is prohibited except wherein provided for by a proper license issued thereunder.

Fermented fruit juices used as a beverage (which, of course include what is commonly known as "hard cider") are generally classified as wines and as such may be produced under a Plenary or Limited Winery license.

The annual fee for a Plenary Winery license is \$500.00, and the allowable quantity to be manufactured thereunder is unlimited.

The annual fee for the Limited Winery license is graduated as follows: to manufacture between twenty-five hundred (2,500) and five thousand (5,000) gallons per annum, two hundred dollars (\$200.00); to manufacture between one thousand (1,000) and twenty-five hundred (2,500) gallons per annum, one hundred dollars (\$100.00); to manufacture between two hundred (200) and one thousand (1,000) gallons per annum, twenty-five dollars (\$25.00); to manufacture less than two hundred (200) gallons per annum, one dollar (\$1.00).

Herewith application blank to be filed in duplicate. Check covering fee shall be drawn payable to D. Frederick Burnett, Commissioner, and certified.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By: B. Carlton Brown,  
Deputy Commissioner

6. LICENSE FEES - REBATE ON SURRENDER - COMPUTATION - STATUTORY DEDUCTIONS MAY NOT BE WAIVED BY MUNICIPALITY.

D. Frederick Burnett, Commissioner.

Dear Sir:

I represent the Boroughs of Alpine and Closter. I understand that the statute as it is presently constituted provides that in the case of a voluntary return of a liquor license, a municipality shall deduct a pro rata share for the amount of time during which the license shall have been in effect, and in addition thereto shall deduct fifty percent of the license fee.

Will you kindly notify me whether or not the fifty percent is deducted from the entire amount of the license fee or whether the fifty percent is to be deducted only from the amount to be returned to the applicant.

Will you also notify me whether it is possible under this Act for a municipality to waive either part or whole of the fifty percent?

Very truly yours,

C. CONRAD SCHNEIDER

October 3, 1934

C. Conrad Schneider, Esq.,  
Englewood, N. J.

Dear Sir:

Section 28 of the Control Act provides that upon the surrender of any license, except a seasonal retail consumption license, the licensee shall be entitled to a refund which is determined as follows: the prorated fee for the unexpired term should first be ascertained; from that sum fifty (50%) per centum of the full amount of the license fee which accompanied the application should be deducted; the balance, if any, constitutes the amount to be refunded.

Under the provisions of Section 28 the licensee is disqualified from obtaining the aforesaid refund if he has committed any violation of the Act or any rule or regulation or done anything which in the fair discretion of the issuing authority should bar or preclude the licensee from making a claim for refund. In addition, all taxes and other set-offs or counterclaims payable to the State of New Jersey or any municipality must be paid before the licensee is entitled to any refund.

Upon the surrender of a license the issuing authority should certify that fact to the Commissioner together with the date of the surrender.

The fifty (50%) per centum deduction hereinbefore mentioned cannot under any circumstances be waived in whole or in part.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By: B. Carlton Brown,  
Deputy Commissioner

7. RULES GOVERNING TRANSPORTATION OF ALCOHOLIC BEVERAGES  
INTO NEW JERSEY - BONA FIDE INTERSTATE  
SHIPMENTS

September 28, 1934

Messrs. Collins & Corbin,  
1 Exchange Place,  
Jersey City, N. J.

Gentlemen:

I have your letter inquiring whether a railroad may transport, in trucks operated under its exclusive control, alcoholic beverages not intended for use or sale in New Jersey, from their first point of arrival in New Jersey at a railroad station to points outside the State.

We need not here consider the extent of a State's power to regulate interstate shipments of alcoholic beverages as distinguished from other interstate shipments. See Bulletin #19, Item #1. When the Rules Governing the Transportation of Alcoholic Beverages into New Jersey were adopted, it was clearly contemplated that bona fide interstate shipments should not be restricted. See Bulletin #39, Item #1. The facts presented disclose an interstate shipment without substantial interruption within the doctrine referred to in Minnesota vs. Blasius, 290 U. S. 1 (1933) where the Supreme Court said:

"If the interstate movement has begun it may be regarded as continuing \* \* \* despite temporary, interruption due to the necessities of the journey or for the purpose of safety and convenience in the course of the movement. \* \* \* The question is always one of substance and in each case it is necessary to consider the occasion or purpose of the interruption \* \* \*".

Paragraph 2 of the Rules Governing the Transportation of Alcoholic Beverages into New Jersey provides that "Alcoholic beverages not intended for sale or use in New Jersey may be transported through this State in any vehicle, provided no delivery is made in New Jersey". It is the ruling of the Commissioner that the foregoing paragraph applies to bona fide interstate shipments of alcoholic beverages, even though the beverages are transferred from one vehicle to another in the course of and incidental to their journey through this State.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

8. LICENSES - EFFECT OF POSSESSION OF LICENSED PREMISES ON VALIDITY  
OF LICENSE

October 8, 1934

Township of Pennsauken,  
Camden County, N. J.

Gentlemen:

In July, 1934, the Township of Pennsauken issued a

license to Joseph Kember, lessee of the licensed premises located at #4800 Crescent Boulevard, Pennsauken, New Jersey. The lessee was never permitted to take possession of the leased premises and on August 21, 1934, he instituted an action in the Camden County Court of Common Pleas, in which he alleges that the lease was repudiated and terminated and seeks to recover damages, including inter alia the amount paid by him under the terms of the lease.

On August 23, 1934, the premises were leased to Richard Deighan. Thereafter, Joseph Kember filed a bill in Chancery in aid of his action at law. He does not question, either in the action in the Camden County Court of Common Pleas or in the suit in Chancery, the right of Richard Deighan to possession of the premises.

A stipulation containing the foregoing facts and signed by counsel for the Township of Pennsauken, Joseph Kember and Richard Deighan has been filed with the Department and the following inquiry is submitted: "Has the Township of Pennsauken the right to issue a license under the above facts?" The answer is in the affirmative.

The first lessee, by his action at law, his suit in Chancery and the stipulation filed with the Department, acknowledges that he no longer is asserting any right to possession under his lease. Section 23 of the Control Act provides that the effect of every license is confined to the licensed premises. If a licensee's interest in the licensed premises ceases, he may apply for a transfer of the license to a different place of business (Section 23), but in the absence of such transfer, the license will not enable him to operate thereunder, - at least while he has no interest in the licensed premises. See Procoli vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #6.

On the other hand, the present applicant, Richard Deighan, now holds a lease for the premises in question and his right to possession is not being questioned by either the landlord or the first lessee.

It seems clear, therefore, that he has a sufficient interest in the licensed premises to support his application and the Township of Pennsauken would be justified in issuing a license to the applicant if he is otherwise qualified. Cf. Yanuzis vs. Municipal Board of Alcoholic Beverage Control of Camden County, Bulletin #37, Item #1.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

## 9. LICENSES - SURRENDER - REBATES - PROCEDURE

October 8, 1934

Mr. Jonathan H. Jones,  
Clerk of Atlantic Township,  
Phalanx, N. J..

Dear Sir:

I have yours of October 5th, in which you request information with respect to the procedure to be followed upon voluntary surrender of a license.

Section 28 of the Control Act provides that upon the surrender of any license, except a seasonal retail consumption license, the licensee shall be entitled to a refund which is determined as follows: the prorated fee for the unexpired term should first be ascertained; from that sum fifty (50%) per centum of the full amount of the license fee which accompanied the application should be deducted; the balance, if any, constitutes the amount to be refunded.

Under the provisions of Section 28 the licensee is disqualified from obtaining the aforesaid refund if he has committed any violation of the Act or any rule or regulation or has done anything which in the fair discretion of the issuing authority should bar or preclude the licensee from making a claim for refund. In addition all taxes and other set-offs or counterclaims payable to the State of New Jersey or any municipality must be paid before the licensee is entitled to any refund.

Upon the surrender of a license the issuing authority should certify that fact to the Commissioner together with the date of the surrender.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By:  
B. Carlton Brown,  
Deputy Commissioner

## 10. RETAIL TRANSIT LICENSES - FOREIGN CORPORATIONS - WHEN AUTHORIZATION TO DO BUSINESS WITHIN THE STATE IS NECESSARY TO ISSUANCE OF LICENSE

Dear Commissioner:

The legal department of the Pennsylvania Railroad Company has presented a problem which we believe requires a ruling from you. We talked with Mrs. Liddell concerning same and she suggested submitting facts.

The New York, New Haven and Hartford Railroad Company, together with the Pennsylvania Railroad Company, operates a through passenger service between Boston and Washington. Passengers traveling through from Boston to Washington or Washington to Boston are not required to change cars. The cars themselves, including the dining car, are shifted at New York from the New

Haven line and attached to the Pennsylvania train so that the passengers are not required to change cars or to interrupt their meals upon arrival at New York. The train, with said cars attached, then continues on through New Jersey and Pennsylvania down to Washington. In some cases the traffic is light and the passengers of the parlor car are changed over to the Pennsylvania train, but in most cases the operation is as above indicated. However, the dining car in all instances, and very often the club car, makes the complete trip from Boston to Washington. The crew from New York to Washington is completely Pennsylvania with the exception of the employees on the dining car, who are in all instances New Haven employees.

The operation is completely a Pennsylvania Railroad operation from New York to Washington. The revenue from the dining car belongs to the New Haven Railroad.

The New Haven Railroad is not registered to do business in New Jersey and does not desire to go to the expense of registering or maintaining an office here inasmuch as they really do no business in this State, the arrangement being merely a reciprocal one between the two railroad companies for the purpose of accommodating the passengers of both roads. The greater majority of passengers riding upon these trains board same at New York for other points between New York and Washington, through passengers being by far in the minority. Upon boarding the train they find that the dining car belongs to the New Haven Railroad Company, and not being licensed to sell alcoholic beverages, they cannot be accommodated.

The New Haven Railroad Company is licensed to do business in New York and in New England states. The Control authorities in Pennsylvania and Delaware have assured them that they are qualified to obtain a license in those two states even though they are not registered to do business in either state.

We now ask your advice concerning their right to a license in New Jersey and under what conditions the same can be granted. They are not making the application at this time because the New Haven officials do not desire a license unless same can be obtained in all four states, to wit, New Jersey, Pennsylvania, Delaware and Maryland, so that the passengers can be accommodated along the entire route. The decision of the Maryland authorities is still pending.

We suggest that the New Haven directors could appoint a Pennsylvania Railroad official as their agent for the purpose of service of any process either from your office, the tax office, or any Court in any action concerning liquor matters. The Pennsylvania Railroad Company is willing to accept such responsibility. However, they do not desire that either they, or their agent, shall be responsible in any way for the acts of the New Haven, or its employees. Their agent would merely act for the purpose above indicated - receiving any process - so that the New Haven road would be brought under the jurisdiction of the New Jersey laws.

We might point out to you that the Pennsylvania Railroad is as much interested in obtaining a favorable decision upon this matter as is the New Haven Railroad, not for revenue purposes, for there no doubt would be a loss in the operation, but for the accommodation of passengers.

For your information we point out sub-sections b, c and f of Section 20 on the Retail Transit Application as being the cause of the difficulty in which both Railroads now find themselves.

Very truly yours,

WALL, HAIGHT, CAREY & HARTPENCE

October 8, 1934

Messrs. Wall, Haight, Carey & Hartpence,  
#15 Exchange Place,  
Jersey City, N. J.

Gentlemen:

I have your letter inquiring whether a foreign railroad operating a passenger service between Boston and Washington through New Jersey, must register with the Secretary of State before it may obtain a plenary retail transit license.

The requirement that foreign corporations seeking to obtain licenses to sell alcoholic beverages in New Jersey must first be authorized to do business within this State, is not contained in the Control Act, but was adopted by the Commissioner in order to insure compliance by such corporations with the provisions of the General Corporation Act. It was not intended to apply in situations where such foreign corporations would not be required to register with the Secretary of State as provided in Section 97 of the General Corporation Act and the cases decided thereunder.

Accordingly, the Commissioner has ruled that where a foreign corporation does not transact business in this State but merely causes shipments to be made from without this State to New Jersey licensees, pursuant to contracts executed outside this State, registration with the Secretary of State is not a condition precedent to the issuance of a license. See Dickerson vs. Levine, 98 N.J.L. 313, (Sup. Ct. 1923).

Section 97 of the Corporation Act expressly excepts railroad corporations from the requirement therein set forth that foreign corporations file in the office of the Secretary of State copies of their certificates of incorporation. Accordingly, it is the ruling of the Commissioner that registration with the Secretary of State is not a condition precedent to the issuance of a plenary retail transit license to a foreign railroad corporation operating a passenger service from Boston to Washington through New Jersey. Such corporation will, however, be required to designate within this State an agent for the service of process in order to insure to our courts jurisdiction of causes of actions against such corporation which arise in this State.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

## 11. TWO HUNDRED FEET RULE - HOW MEASURED - ENTRANCE TO CHURCH

August 27, 1934

E. Robert Coven, Esq.,  
126 Market Street,  
Paterson, N. J.

Re: Jakob Ackerman vs. Board of Aldermen  
of the City of Paterson.

Dear Sir:

The appeal in the above entitled matter has been dismissed by consent, but the parties have requested a ruling upon the question of whether the distance from the premises sought to be licensed to the Second Reformed Church, as illustrated by blue prints introduced in evidence, measured in the manner provided for by Section 76 of the Control Act, is less than 200 feet

Section 76 provides that the 200 feet referred to therein shall be measured "in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed". The normal way that a person would properly walk from the entrance of a church to the center of the walk at the street corner would be in a straight line and not to the center of the sidewalk in front of the church and then at right angles to the street corner. Measured in this manner, the nearest distance from the door of the Second Reformed Church to the premises sought to be licensed would be 192'10".

Furthermore, the Second Reformed Church is surrounded by a fence, and the gate leading to the entrance door is 13'5" distant therefrom. Between the gate and the entrance door are steps elevated from the level of the sidewalk. Under these facts the entrance to the church, within the meaning of Section 76, must be considered as the point at which the gate is located, rather than the entrance door. It is significant that Section 76 contains no mention of the phrase "entrance door" and refers solely to "entrance". The gate clearly separates the church from the walk used by the general public, and persons passing through the gate would be considered as entering the church. The exclusion of the 13'5" between the entrance door and gate would result in the entrance of the premises sought to be licensed being 179'5" distant from the entrance to the church.

It is the ruling of the Commissioner that the premises sought to be licensed are within the prohibited area provided for by Section 76.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

## 12. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES

6. No licensee shall allow, suffer or permit any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale, on or about the licensed premises.

7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises.

8. No licensee shall possess, allow, permit or suffer on or about the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing.

The foregoing rules are hereby promulgated effective immediately.

Dated: October 11, 1934

D. FREDERICK BURNETT,  
Commissioner

13. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - SOLICITATION OF BUSINESS

October 11, 1934

Samuel Moskowitz, Esq.,  
400 - 38th Street,  
Union City, N. J.

Dear Sir:

Rule #2 concerning conduct of licensees and the use of licensed premises applies to all licensees.

Rule #3 is not designed to prevent proper advertisement in the newspapers or sending advertising literature through the mail.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

14. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - ELECTION DAYS - RESTAURANTS

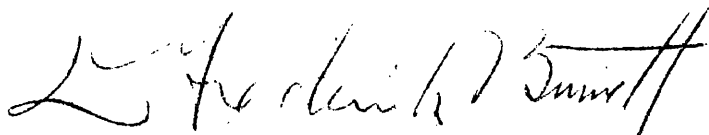
October 11, 1934

W. H. Jamouneau, Town Clerk,  
Irvington, N. J.

Dear Mr. Jamouneau:

Rule #2 concerning conduct of licensees and the use of licensed premises does not require that restaurants which happen to have retail consumption licenses shall be closed on election days. The restaurant may do its regular business, as usual, but under no circumstances whatsoever may it sell any alcoholic beverages. That includes, of course, beer as well as hard liquor.

Very truly yours,



Commissioner