STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 35. June 14, 1934

1. NATIONAL GUARD - ANNUAL ENCAMPMENT AT SEA GIRT - PRIVATE CONCESSIONS.

June 4, 1934

New Jersey National Guard,
27 Washington Street,
Newark, N. J.

Attention: Major General John J. Toffey

Gentlemen:

I wish to acknowledge receipt of your letter dated June 1st in which you advise that the New Jersey National Guard is desirous of making arrangements for the sale of beer by the Dreyer Trading Company at the Camp Exchange, Camp Moore, during the period from June 9, 1934 until September 30, 1934; that the National Guard will receive 10% of the gross income; that the camp is located on state property at Sea Girt and is operated entirely under military control; and inquire whether a license is necessary to permit the sale of beer as contemplated.

Section 24 of the Control Act provides that if the consent of the State Military Board is first obtained, alcoholic beverages for consumption on the premises may be sold at any exchange, whether camp, post or regimental, organized under the State National Guard regulations. While this Section was intended to confer a special privilege upon the State National Guard, it was not intended to permit private persons to engage in the sale of alcoholic beverages for personal gain without first obtaining a license. Accordingly, Section 24 must be construed to exclude situations where beverages are to be sold by private concessionaires.

No municipal license can be issued to the Dreyer Trading Company, for the premises sought to be licensed being under exclusive military control, are not subject to the jurisdiction of the controlling authority of any municipality as contemplated by Section 13 of the Control Act. No municipal issuing authority or local enforcing agency would have power to conduct examination of the premises, supervise the conduct of the business therein, or enforce the provisions of the Control Act with respect thereto.

Section 39 of the Control Act provides that, except as permitted in Section 24, no sale of alcoholic beverages shall be made in any public building owned or controlled by the State except as permitted by the Commissioner in specified cases and subject to rules and regulations. In Bulletin #33, Item #10, the Commissioner ruled that this Section does not confer any independent power upon him to issue licenses but merely permits him to exercise his discretion as to whether sales of alcoholic beverages may be made in such public buildings by persons otherwise duly authorized to make such sales.

Section 75, however, authorizes the Commissioner to issue temporary permits in contingencies not expressly provided for by the Act. Under this Section, the Commissioner will enter-

tain an application directly from the Dreyer Trading Company for a permit authorizing the sale of beer in the Camp Exchange located at Camp Moore during the period from June 9 until September 30, 1934, provided the application is accompanied by a verified statement, executed by proper authorities of the National Guard, consenting to and approving the issuance of such special permit. The permittee will, of course, be obliged to abide by all of the provisions of the Control Act and the rules and regulations thereunder, although the duty of insuring such compliance will properly rest in your jurisdiction.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By:
Nathan L. Jacobs,
Counsel-in-Chief

2. PRINTING OF NOTICE OF INTENTION - LEGAL NEWSPAPERS - PUBLICATION AND CIRCULATION.

June 9, 1934

Facts of Bayonne Publishing Co., Inc.,
Capitol Building,
Bayonne, N. J.

Refer to Leo W. Steiner, President.

Dear Sir:

Acknowledgment is hereby made of your letter dated June 2nd in which you advise that "The Facts of Bayonne", a weekly newspaper printed elsewhere but published and circulated in Bayonne originated less than a year ago; that on May 15, 1934, it purchased from John A. Pritchard the "Hudson County Republican", a weekly newspaper which had been published and circulated in Hudson County in excess of a year; that thereafter the newspaper was published by Facts of Bayonne Publishing Company, Inc., under the name of "Facts of Bayonne [illegible]Hudson County Republican"; and inquire whether notice of intention to apply for a license to serve alcoholic beverages at premises located in Bayonne may properly be published in your newspaper.

Section 22 of the Control Act provideds that notice of intention shall be inserted, once a week for two successive weeks, in a newspaper printed in the English language and published and circulated in the municipality in which the premises sought to be licensed are located, provided, that if there is no such newspaper, then in a newspaper published and circulated in the county where the premises are located.

The fact that your newspaper is published weekly rather than daily is not a disqualification. See Bulletin #11, Item #1. Nor will the fact that it is actually printed elsewhere constitute a disqualification provided it is published and circulated in Bayonne. The courts have recognized that even though a newspaper is actually printed elsewhere, it might, nevertheless, be considered as "published" where it is first issued for public distribution. And where, as in your case, everything pertaining to the publication, except the physical printing, takes place in Bayonne where the newspaper is first issued to the public, it is published and circulated in Bayonne within the meaning of the Control Act. (See Bayer V. Hoboken, 44 N. J. L. 131 (Sup. Ct. 1882), aff'd 45 N. J. L. 185 (E. & A. 1883).

Although the Control Act is silent on the matter, it is clear that notice of intention, being a legal notice, must be published in a newspaper designated by the Legislature as qualified to publish legal advertisements. Under our statutes only newspapers which have been published for at least one year are qualified to publish legal advertisements. See 3 C.S. p. 3764.

Accordingly, unless you are entitled to add the period during which the "Hudson County Republican" was published, your newspaper, having been in existence for less than one year, is not qualified to publish notices of intention required by the Control Act. If the identity of the "Hudson County Republican" had continued, despite its purchase by "Facts of Bayonne", it would still remain as a newspaper qualified to publish legal advertisements. See Lane v Smythe, 46 N.J.Eq. 443 (Ch. 1890). Your letter indicates, however, that upon your purchase of the "Hudson County Republican" it was discontinued as a newspaper and that although "Facts of Bayonne" changed its name and received the subsciption list of the purchased newspaper, no substantial change took place in its manner of publication. Assuming the accuracy of the foregoing facts, your present newspaper could not be said to have been published for at least one year and, consequently, it would not be qualified to publish the notice of intention provided for by the Control Act.

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

3. SPECIAL PERMITS - PLENARY CONSUMPTION LICENSES - WHEN NOT ISSUABLE.

June 2, 1934

Dear Commissioner:

Will you please send me an application for one-day license; also advise me if there is any advantage in procuring same for summer season, including all Sundays and holidays.

Respectfully,

N. DiFrancesco.

June 8, 1934

Mr. N. DiFrancesco,
Chimney Rock Hotel,
Bound Brook, N. J.

Dear Sir:-

There is no such thing as a one day license. If you are in the regular business of selling liquor, you will have to obtain the regular Plenary Retail Consumption License from your own municipality.

Very truly yours,

D. Frederick Burnett,
Commissioner

4. SPECIAL PERMITS - DIRECT PUBLIC SERVICE - FIRE COMPANIES.

ISELIN FIRE CO., No. 1
Green Street, Iselin, N. J.

June 8, 1934

Mr. D. Frederick Burnett
744 Broad Street
Newark, New Jersey.

My dear Mr. Burnett:

Our Fire Company is planning a carnival to be held on June 21st, 22nd and 23rd and we were hoping to have a counter at which we would sell beer. We have been informed by the local authorities that a fee of ten dollars is charged by the State for each night that the counter is open.

As you can see, in a community the size of ours that the fee would be much more than we could make on the beer we would sell and a Firemens' Carnival without beer would be rather flat to say the least.

We are writing to you to see if you cannot make some adjustment especially for groups like ours who are giving a great deal of service to our community free of charge.

Any help or information you may see fit to give us will be appreciated deeply by the fifty members of our Company.

Respectfully yours,

Harry King, Chief.

June 9, 1934

Iselin Fire Co., No. 1,
Green Street,
Iselin, N. J.

Attention: Harry King, Chief.

Gentlemen:

I have yours of the 8th.

In view of the direct public service that you render free of charge to your community, I will issue a three day permit for $15.00 providing that only beer is sold, and further providing that the written consent of the governing body and the Chief of Police of the municipality where the carnival is held is forwarded to me, together with the application fee.

With best wishes for the success of your carnival, I am.

Cordially yours,

D. Frederick Burnett,
Commissioner

5. RULES GOVERNING PROCEDURE ON ISSUANCE OF MUNICIPAL RETAIL LICENSES

Honorable Walter R. Darby, State Auditor, has ruled that for reasons of economy municipalities may print the several license forms, each on different color of paper, but that only

one binding need be used. Hence, rule (1) of Rules Governing Procedure on Issuance of Municipal Retail Licenses, as set forth in Bulletin 33, item 1, is amended to read:-

> The Issuing Authority of each municipality shall cause license forms to be printed in bound books, similar to a check book or stock certificate book, one book for each type of license; provided, however, that the several license forms may, at the option of each municipality, be printed each on a different color of paper but that only one binding need be used. Each license form shall have a stub bound permanently in the book and detachable therefrom via perforation. The stubs of all books shall be printed in the following manner:
>
> License No. _____
> Name _____
> Licensed Premises _____
> Date of Issue _____
> Fee Paid _____
> Receipted by _____
> _____
> Special Conditions, if any _____
> _____
> _____
> _____

6. APPELLATE DECISIONS - GAMBLE VS. AVON-BY-THE-SEA.

GEORGE H. GAMBLE,

Appellant

-vs-

BOARD OF COMMISSIONERS OF THE BOROUGH OF AVON-BY-THE-SEA,

Respondent.

ON APPEAL

CONCLUSIONS

H. Edward Wolf, Attorney for Appellant
Samuel Y. Hampton, Attorney for Respondent.

BY THE COMMISSIONER:

This appeal was submitted by stipulation. It appears therefrom that the appellant applied to the Board of Commissioners of the Borough of Avon-by-the-Sea, for Plenary Retail Consumption License, for premises at 224 Main St.; that the appellant has complied with all the conditions precedent to the issuance of a license, and no written objections have been filed against the granting of the license; that the character and fitness of the appellant are unquestioned; that the premises sought to be licensed are located in a business section, and conform with the Control Act, and rules and regulations made pursuant to it.

The sole reason for refusal of the license was Section 5 of a resolution passed by the local Board providing, "no license shall be issued for any premises in the Borough of Avon-by-the-Sea, whereon the sale of alcoholic beverages is prohibited or restricted by deed or otherwise."

The deed of the premises sought to be licensed, contains the restriction that the parties thereto, "shall not nor will, at any time or times hereafter, cause, procure, permit or suffer any intoxicating liquors, wines, cider, ale, or lager beer, to be sold upon the herein granted and described premises, or upon any part thereof".

Section 5 of the Resolution was not approved, nor can it be approved by the Commissioner of Alcoholic Beverage Control, as the enforcement of restrictive covenants are cognizable only in the courts, and do not concern the issuing authority. Bul. 14, Item 6.

Covenants in deeds not to sell intoxicating liquors on premises for which a license is sought, however they may bind the parties to such deeds, are no legal restraint upon a court in granting tavern licenses for the public convenience. Barnegat Beach Association vs. Busby, 44 N.J.L. 627.

If Section 5 of the Board's resolution was approved, a condition might result whereby an applicant, otherwise qualified, might be denied a license by reason of a restriction in a deed which could not be enforced by the parties to the deed.

Hence, Section 5 of the resolution is disapproved, and the action of the said Board in denying application of the appellant is therefore reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 11, 1934

7. APPELLATE DECISIONS - VANNOZZI VS. TRENTON.

ALLESSANDRO VANNOZZI, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

George Pellettieri, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, appellant applied to the respondent for a plenary retail consumption license. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

Respondent asserts that the denial of the application was justified because the premises sought to be licensed are in a restricted residential zone.

At the time of passage of Trenton's Zoning Ordinance,

appellant conducted a candy and grocery store and under the provisions of Section 7 of Trenton's Zoning Ordinance such non-conforming use may be continued, or changed, subject to regulation.

A zoning ordinance restriction, however, is not necessary to justify respondent's action. The neighborhood is admittedly residential and the sale of alcoholic beverages therein is not desirable. See Speaks vs. Mayor and Borough of Closter, decided on April 4, 1934 by the New Jersey Supreme Court (not reported), where the Court said:

> "Long before the Eighteenth Amendment was ever contemplated, the sale of malt liquors was not favored in residence districts. It was a well-recognized fact that the very character of a place licensed for the sale of alcoholic beverages, whatever the content, changed the character of the neighborhood...."

The fact that appellant conducted his business prior to the enactment of the Zoning Ordinance enables him, under the terms thereof, to continue it or change to any other business in which he has a right to engage. A license to sell alcoholic beverages is not a right, however, but a privilege which may be denied for just cause. See Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #29, Item #1. The strictly residential character of the neighborhood in which the premises sought to be licensed are located, was sufficient cause for the denial of the privilege sought.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 11, 1934.

8. APPELLATE DECISIONS - COHEN VS. TRENTON.

HARRY COHEN, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON Respondent.	ON APPEAL CONCLUSIONS

Leo Rogers, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, appellant applied to the respondent for a plenary retail consumption license. On December 30th, 1933, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

Respondent asserts that the denial of the application

was justified because of the past record of the applicant. At the hearing, it appeared that in 1922 the premises sought to be licensed were raided, slot machines confiscated, and the appellant convicted of violating the National Prohibition Act. In 1926 the premises were again raided and slot machines confiscated. Appellant admitted that prior to the second raid, and even thereafter, he sold liquor in violation of the National Prohibition Act in conjunction with the conduct of his cigar store at the premises sought to be licensed. A police report submitted to the respondent by the Trenton police authorities questioned whether a license should be granted.

In view of all of the foregoing circumstances, it cannot be said that respondent exceeded its powers in denying the application of the appellant because of his past record. Cf. Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #29, Item #10.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 11, 1934

9. APPELLATE DECISIONS - ZELENAK VS. TRENTON.

SANDOR ZELENAK, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Irving H. Lewis, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, appellant applied to the respondent for a plenary retail consumption license. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

Respondent asserts that the denial of the application was justified because of the unfitness of the applicant. At the hearing, appellant testified that he had never been arrested and had no dealings whatsoever in liquor while the National Prohibition Act was in force.

Siegmund Baron, a witness who testified on behalf of respondent, contradicted the appellant. He testified that during 1920, while he was engaged in bootlegging, a shipment of whiskey owned by him was transported from New York to Trenton by the Star Express Company, operated by appellant. The whiskey was stored in a garage owned by the Express Company and was to be moved during the evening of August 18, 1920. When he called for the whiskey it was gone, and he charged appellant with its theft. Appellant was later indicted for grand larceny in the State Court

and for violating the National Prohibition Act in the Federal Court. The State indictment was never prosecuted; appellant was convicted in the Federal Court, but the conviction was later set aside.

Upon being recalled for further testimony, appellant admitted that his company transported the whiskey in question, and that he had been arrested and twice indicted. Appellant sought to explain his earlier testimony, that he had never been arrested, by stating that his attorney, Mr. William Reich, had instructed him to answer in the negative, in the event that he was ever asked whether he had been arrested. This was denied by Mr. Reich.

Upon all of the foregoing, it is evident that the respondent was entirely justified in denying the application because of the unfitness of the applicant. Indeed, the conduct of the appellant, in falsely testifying on the matters set forth above during the hearing on the appeal, is alone sufficient cause for sustaining the denial of the application.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Dated: June 11, 1934. Commissioner

10. APPELLATE DECISIONS - STACIEWICZ VS. TRENTON.

ALEX STACIEWICZ, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

David Kelsey, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, appellant applied to the respondent for a plenary retail consumption license. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

One of the reasons assigned by respondent for the denial of application is that there is a school near the premises sought to be licensed. The distance from the entrance door of the school building to the entrance door of the appellant's premises is slightly over 200 feet. An entrance to the school's playground, however, is within 200 feet, and the playground extends to within 15 feet of the entrance to the appellant's premises. A small vacant lot separates the appellant's place of business and the school's playground.

It may be that under a proper construction of Section

76 of the Control Act, no license may be issued where the premises sought to be licensed are within 200 feet of the school's playground. See Bulletin #3, Item #8. That issue need not, however, be determined. Section 76 expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet.

Respondent's determination that the issuance of a license for appellant's premises, substantially adjacent to a school playground, was socially undesirable, was justified by the evidence and furnished reasonable cause for the denial of the application.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Dated: June 11, 1934 Commissioner

11. APPELLATE DECISIONS - CHAMBERS VS. TRENTON.

CHARLES W. CHAMBERS Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Rudolph A. Socey, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, appellant applied to the respondent for a plenary retail consumption license. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

The applicant contemplates conducting a bar on the second floor of the Hotel Davenport, for the convenience of its guests, under a lease arrangement with the owner of the hotel. Respondent does not question the character and fitness of the applicant or the suitability of the hotel. Appellant complied with all the formal requirements pertaining to his application, and it is not suggested that his application contained any false statements.

Respondent asserts that it denied the application because it disapproved of bars on second floors of hotels, and also disapproved of bars operated in hotels by persons other than the proprietors of the hotels.

Whether uniform policies to such effect would constitute reasonable regulations need not be determined, for the evi-

dence discloses that no such positions were consistently maintained by the respondent. Members of the respondent Board testified that a license had been issued for a bar located on the second floor of a hotel and that a license had likewise been issued to permit the operation of a bar by a person other than the proprietor of the hotel. No satisfactory explanation was advanced for the respondent's discrimination.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 12, 1934.

12. APPELLATE DECISIONS - MC CONNELL VS. TRENTON.

CHARLES MC CONNELL,

Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,

Respondent

ON APPEAL

CONCLUSIONS

Ernest S. Glickman, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

Testimony was introduced with respect to the character and fitness of the appellant and the suitability of the premises sought to be licensed. Appellant complied with all of the formal requirements pertaining to his application, and it is not suggested that any false statements were made.

Respondent asserts that it limited the number of licenses to be issued in the City of Trenton to 250 and that appellant's application was properly denied in view of this limitation. It does appear that when, in December, 1933, the members of the respondent Board began their examination of applications, they agreed to limit the number of licenses to 250, but no resolution was adopted to this effect until February 3, 1934. (See Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5.) When the application of appellant was denied, on January 15, 1934, there was no official final determination limiting the number of licenses to be issued. Accordingly, the limitation may not be applied to the appellant.

Respondent further contends that the license was properly denied because the appellant's premises are located within

100 feet of a theatre, attended by many children as well as adults. It may well be that a uniform policy against licenses for premises, reasonably considered by the issuing authority as being too near a theatre attended by children, would constitute a justifiable regulation. Cf. Staciewicz vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #10. That issue, however, need not be determined since the evidence discloses that no such policy was consistently maintained by the respondent. Indeed, a member of respondent Board testified that several licenses were issued for premises near theatres, and in one instance for premises within 40 feet of a theatre. No satisfactory explanation was advanced for the respondent's discrimination.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 12, 1934.

13. LICENSES - RENEWAL APPLICATIONS - NECESSITY OF RENEWED PROTES

June 5, 1934

Dear Commissioner:

I am writing to solicit some information concerning a permit for Plenary Consumption License which, I am given to understand, will be applied for about June 30, for the second time. The first application having been rejected on presentation of a petition from residents and property owners.

What I would like to know is if it will be necessary to again present a new petition against said issuance.

June 9, 1934

Dear Sir:-

I have yours of June 5th. If you and your neighbors object to the issuance of the license in question, it will be necessary for you to again register your objections with the issuing authority. Each application for a license is an entirely new proceeding.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

14. GOVERNING BOARD OR BODY - WHAT CONSTITUTES - THE ELIZABETH SITUATION - HEREIN OF "GENERAL LICENSING POWERS".

June 11, 1934

Theodore W. Brokaw, City Clerk,
Elizabeth, N. J.

Dear Sir:-

I have before me yours of the 7th submitting for approval resolution of your City Council appointing a Municipal Board of Alcoholic Beverage Control; also yours of the 9th submitting minutes of its organization meeting; also letter from George F. Cummings, Secretary of the Board of Public Works of June 1st submitting resolution of his Board of May 31st, together with copy of opinion of Edward Nugent, Esq., City Attorney.

I had not answered the Cummings letter because of the policy of this Department to refrain from giving advisory opinions on matters which only incidentally concern control of the liquor traffic or the enforcement of the Act. Bulletin 15, item 6.

Your request of June 7th, however, for approval of the resolution creating a local excise board calls for the determination of the validity of a matter primarily affecting the administration of the Act. It is my duty, therefore, so to determine.

Chap. 85, P. L. 1934, defines governing board or body as: "The board or body which governs a municipality, including a board of aldermen in municipalities so governed; provided, however, that in every municipality having a board of public works which exercises general licensing powers said board shall be considered as the governing board or body."

Since Elizabeth has a Board of Public Works, the question boils down to the simple inquiry as to whether or not said Board does in fact exercise "general licensing powers".

"General licensing powers" means powers to license which are applicable to all members of a class; broad; extensive though not universal; all as distinguished from powers which are merely exceptional, isolated or special. By its very concept, the word is not capable of precise import. It connotes the plural, not the singular; the wide, not the narrow; the indefinite usual, not the particular limitations of the specific.

It appears from the above correspondence that the Board of Public Works exercises licensing powers in respect to buildings and electrical permits, jitney buses, peddlers, junk dealers, taxi owners and drivers, and market stands. Power to issue these several kinds of heterogeneous and miscellaneous licenses shows a generality of such power and comes within the broad meaning of the statutory language.

I therefore conclude that the Board of Public Works of Elizabeth exercises general licensing powers and is therefore exclusively vested with the power and duty under the statute to issue beverage licenses and administer the Alcoholic Beverage Law.

In reaching this conclusion, I have not been unmindful of the argument of the learned City Attorney. His brief states: "The first question is to determine the fact, whether or not, the Board of Public Works or the City Council exercises general licensing power in this City." This is not the question raised by the statute. The Act does not lodge the power in the body which has "the general licensing power" as the Attorney finally concludes, but confides it in the Board of Works if it does in fact exercise "general licensing powers". Hence, it is not a matter of comparison. Undoubtedly the City Council has general licensing powers but so does the Board of Works. It was the faulty premise which induced the erroneous conclusion.

It follows that resolution of the City Council of June 5th, appointing a Municipal Board of Alcoholic Beverage Control, is disapproved. With it must fall the Organization Meeting of June 7th. The only valid licenses I can recognize in respect to Elizabeth are those issued by the Board of Public Works.

Very truly yours,

D. Frederick Burnett,
Commissioner

15. LICENSES - OTHER MERCANTILE BUSINESS - WHAT CONSTITUTES - GASOLINE STATIONS.

June 12, 1934.

City of Millville,
Cumberland County, N. J.

Refer to Harry R. Waltman, City Solicitor.

Dear Sir:

Acknowledgment is hereby made of your letter inquiring whether a retail consumption license may be issued where the applicant sells gasoline taken from pumps situated in front of the building in which the alcoholic beverages are to be sold.

Section 13 of the Control Act provides that after July 1, 1934, no plenary retail consumption license shall be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of non-alcoholic beverages as accessory beverages to alcoholic beverages) is carried on.

The application will contain a description of the premises where the alcoholic beverages are to be sold. (See Bulletin #32, Sheet #4, Question #4). This will, in general, determine what constitutes the licensed premises. See Deck v Bell, 90 N.J.L. 96 (Sup. Ct.). And whether a prohibited business is being conducted in or upon such licensed premises within the meaning of Section 13, will depend on whether the conduct of the respective businesses and their independence of location renders them substantially separate and distinct.

Hence, the fact that two stores, having a solid partition between them and being operated separately though owned by the same person, are under the same roof will not constitute a disqualification. If, however, an open archway is maintained between the stores so as to enable free access from one to the other, they cannot be said to be entirely separate and distinct. The issuance of a license in this latter situation would violate the statute. See Shapiro v. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #34, Item #8.

Similarly, a consumption license may not be issued for premises in which gasoline is being sold. This was the purport of the ruling contained in Bulletin #33, Item #7. Where, however, as is often the case when dealing with a roadstand restaurant, the sale of gasoline is from gasoline pumps located some distance from the building containing the licensed premises and the operation of the roadstand restaurant is distinct from the gasoline service, the issuance of a consumption license is not prohibited. The purpose of the Legislature was to forbid the intermingling of the drinking of alcoholic beverages and the conduct of certain businesses. This legislative purpose is not violated in the situation where the gasoline is sold entirely apart from the premises in which the alcoholic beverages are being sold and consumed.

It is the duty of the issuing authority in the first instance to determine whether, under the principles set forth above, the gasoline in the particular case presented is sold in or upon the premises sought to be licensed.

Verty truly yours,

D. FREDERICK BURNETT,
Commissioner

16. LICENSES - FEES - PRINCIPLES OF PRORATION.

June 12, 1934

Federal Products Company,
#263 Springfield A venue,
Newark, N. J.

Gentlemen:

I have your letter inquiring whether you are entitled to a refund of a portion of the license fee prorated from the date of the filing of your application to the date of the issuance of your license.

The answer is in the negative. Section 22 of the Control Act provides that the full amount of the required license fee must accompany the license application and that upon the denial of the application, 90% of the fee shall be refunded. Section 28 provides that after the issuance of the license, no refund shall be made of any portion of the license fee.

Read in the light of the foregoing provisions, Section 23 of the Control Act must contemplate that license fees shall be prorated from the date of application, rather than the date of the issuance of the license. Otherwise, the statutory prohibition against refunds when the license is issued, enacted by the Legislature with full cognizance that some time must elapse between the filing of the application and the issuance of the license, for investigation of applicant and the premises sought to be licensed, could not be given effect.

It may well be suggested that the present statutory provision is harsh and should be modified. The Commissioner is presently minded to recommend an amendment to the Control Act to provide that the fee shall be calculated from the date of the issuance of the license, but until such an amendment is enacted, the conclusion set forth above cannot be avoided.

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

17. SEASONAL LICENSES - FEES - PRORATION

June 12, 1934

Mr. Charles L. Smith, Clerk
Egg Harbor Township,
Mays Landing, (N.J.) R.D.

Dear Sir:

I have your letter inquiring whether a seasonal license may be issued on July 1st, to expire September 15th, for a prorated portion of the full seasonal license fee.

The answer is in the affirmative. Seasonal licenses, like other licenses, may be issued at any time during the statutory period of such licenses. The fee must be prorated from the date of application until the date of expiration of the license,

which must be the date provided for in the Control Act. Hence, if the date of the filing of application, accompanied by the license fee, is July 1st, the fee for a summer seasonal license will be such portion of the full seasonal license fee as the number of days from July 1st to September 15th, the statutory date for the expiration of such licenses, bears to the number of days from May 15th to September 15th.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By:
Nathan L. Jacobs,
Counsel-in-Chief

Commissioner