

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 18.

March 12, 1934

#1 PERMANENT LICENSES - WHEN TO ISSUE AND WHEN NOT.

Complaints by temporary licensees are coming to me in increasing numbers that permanent licenses are being arbitrarily or wrongfully denied. Hence this notice.

It is proper to refuse to issue a permanent license, even though a temporary license has been issued, where:

- (1) There was fraud or deceit or false statements made in obtaining the temporary license;
- (2) After investigation or hearing the applicant has been found unworthy or the licensed premises unfit;
- (3) The advertisement requirements have not been complied with;
- (4) Any provision of the law or the rules and regulations has not been complied with.

Where, however, a temporary license has been issued and acted upon by the licensee, it is NOT proper to refuse to issue a permanent license merely because of non-compliance with the terms of a municipal resolution entirely prohibiting the business sought to be conducted by such licensee UNLESS such resolution was duly enacted BEFORE the temporary license was issued.

Section 46 provides that no temporary license shall be issued in and for any municipality in which the governing board thereof "shall have prohibited by resolution the business sought to be conducted within such municipality." The quoted words clearly imply that the resolution shall precede the temporary license.

Where, however, temporary licenses were issued in the absence of such a resolution and the licensee is otherwise duly qualified, he cannot rightfully be deprived of his permanent license by a later municipal resolution prohibiting the character of the business sought to be conducted.

Such resolution would be utterly unfair to a licensee who has expended moneys, incurred commitments, and changed his position in reliance upon the license and the good faith of the issuing authorities.

MARCH 9, 1934.

D. FREDERICK BURNETT,
Commissioner

#2 PERMANENT LICENSES - WHEN APPEAL IS NECESSARY

It is obvious that the ruling of March 9, 1934 (Item #1) above applies only where temporary license has actually been issued. If no license has been issued, the only remedy is to appeal to the State Board of Alcoholic Beverage Appeals.

In view of many anxious inquiries as to whether temporary licenses under the old 3.2 Beer Act are covered by the rulings in these bulletins, the answer is obviously and emphatically "no". Those licenses have long since expired by their terms. The term "temporary license" as used throughout in these bulletins has re-

ferred at all times only to temporary licenses issued pursuant to Sec. 46 of the Act Concerning Alcoholic Beverages, passed December 6, 1933.

Dated: March 10, 1934.

D. Frederick Burnett
Commissioner

#3

INDUSTRIAL ALCOHOL - FLAVORING EXTRACTS

March 10, 1934

No license is necessary to buy alcohol actually used in the manufacture of flavoring extracts, because the alcohol so used is for industrial and not for beverage purposes.

At a later date and when the survey and studies now in process have been completed, I purpose to issue rules setting forth reasonable regulations governing the purchase of alcohol for all industrial purposes, so as to insure that such alcohol is not diverted to or used for beverage purposes except upon payment of the full State tax.

Until such rules are promulgated, no permits, reports, or compliance with other formalities by purchasers are necessary so far as this Department is concerned.

D. Frederick Burnett
Commissioner

#4

MUNICIPAL OFFICIALS - DISQUALIFICATION -
INTEREST IN ALCOHOLIC INDUSTRY

March 7, 1934

Michael Cavallo, Mayor,
Borough of Lodi, N. J.

Dear Sir:-

I have your recent letter in which you inquire whether a member of the City Council is eligible to remain a Councilman of the Borough of Lodi and also be interested in a wholesale alcoholic beverage license.

The disqualification in this case exists outside of the statute. A member of the City Council is a member of the body which issues retail licenses.

Although there is no evidence in this case that the Councilman's judgment is influenced for or against the issuance of retail licenses, because of his interest as a wholesaler in his own right, it is entirely possible that such a condition could exist. His judgment in determining who may or may not hold retail licenses in his Borough should not be warped by financial interest in the alcoholic beverage industry.

Every licensee is his potential customer. Even though this Councilman or his company may not directly solicit their business, certainly the very fact that each year these retailers must appear before him for a renewal of their licenses could tend to influence these retailers in their purchases. Therefore, as a matter

of policy, this should disqualify this Councilman.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By:
Sydney B. White,
Inspector-in-Chief

#5 MUNICIPAL OFFICIALS - DISQUALIFICATION -
INTEREST IN ALCOHOLIC INDUSTRY.

March 11, 1934

Mr. John B. Mulligan,
10 Bradley Terrace,
West Orange, N. J.

Dear Sir:

I have yours of March 5th reading:

"If a public official holding elective office is one of a body that pass upon the applications for alcoholic beverage license in his Municipality; and after the passage of the Beverage Act, obtained a position with a concern engaged in the manufacture of alcoholic beverage as a salesman part of his territory being the community where he passed upon the licenses this being a direct violation of Section 8 of the Beverage Act. Does this in your opinion constitute misfeasance of office."

I have heretofore ruled that such a public official is disqualified from passing on any applications for alcoholic beverage licenses. The basis of that ruling (Bulletin 7, item 2 a) is that anyone so financially interested in disqualified independent of statute, because it is fundamental that no one may be judge in his own case, nor should his judgment be warped by financial self-interest. Every licensee is his potential customer. Even though this Councilman, or his company, may not directly solicit their business, certainly the very fact that each year these retailers must appear before him for renewal of their licenses would tend to influence retailers in making their purchases.

Section 8 of the Act, however, has no application to your question except so far as it raises a grave question of ethics. This section applies legally only to those persons appointed to office, position or employment under the Control Act. Municipal officials have many duties imposed upon them by the Control Act, but do not hold their office thereunder.

As to whether the facts recited by you constitute misfeasance of office, you will have to consult the County Prosecutor or your own private counsel, as it is not the function of this Department to render advisory opinions in matters over which it has no jurisdiction. On the other hand, if you have cogent, convincing evidence that any public official has actually violated the ruling above referred to, it is your duty to report the facts forthwith to me and summary proceedings will be instituted forthwith.

Very truly yours,

D. Frederick Burnett,
Commissioner.

#6

LICENSES - ALIENS - SPECIAL CONDITIONS.

BUREAU OF LICENSES
CITY OF PATERSON

March 10, 1934.

Andrew V. Brennan, Registrar
Room 14, City HallComm. D. Frederick Burnett,
Dept. of Alcoholic Bev. Control,
Newark, N. J.

Dear Comm. Burnett:

We would appreciate your opinion on several applicants holding a Temporary Plenary Retail Consumption License. The investigation by the Police Department shows seven of these places having aliens (some with first papers) doing kitchen work, porter and other odd jobs. They have no actual part in the sale of beverages.

We have deferred the issuing of Plenary Retail Consumption Licenses expiring June 30th, 1934, pending a report from you in reference to Section 23 of the Alcoholic Beverage Control Act.

Very truly yours

Board of Aldermen, City of Paterson.

(Signed) Andrew V. Brennan
Registrar of Licenses.

March 12, 1934

Andrew V. Brennan, Registrar,
Bureau of Licenses,
Paterson, N. J.

Dear Mr. Brennan:

I have yours of March 10th.

Sec. 22 provides: "No license of any class shall be issued to any alien."

Sec. 23 provides: "No person who would fail to qualify as a licensee under this act shall be knowingly employed by or connected in any business capacity whatsoever with the licensee" (*italics mine*).

Licenses would necessarily, therefore, have to be refused to these aliens.

Their employment, however, does not necessarily disqualify an applicant for a retail license although it may be cause for revocation.

If the applicants are otherwise qualified and have complied with the law and the rules and regulations, a proper solution would be to issue the licenses inserting in each a special condition reading: "This license is issued upon condition that all aliens employed by or connected in any business capacity whatsoever with the above named licensee shall be discharged within forty-eight (48) hours after the issuance of this license."

It follows, of course, that having imposed the condition, check-ups should be made to see that it has been punctually complied with and not subsequently violated. Revocation proceedings should be immediately instituted if at any future time these aliens or others in their place are employed by any of the licensees.

Very truly yours,

D. Frederick Burnett,
Commissioner

New Jersey State Library