

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N.J.

BULLETIN NUMBER 29.

May 21, 1934.

1. RULES - CONCERNING SALE OF ALCOHOLIC BEVERAGES IN NIPS,
HALF PINTS AND OTHER UNDERSIZED CONTAINERS.

Two weeks ago, retail licensees were advised that effective May 17, 1934, alcoholic beverages except beer and malt beverages may not be sold in containers holding less than a pint. The two weeks period was intended to enable licensees to dispose of such stock on hand. Although "nips" have been quickly eliminated, licensees report that they still have on hand a considerable number of "half pints" and other undersized containers, particularly foreign wines and cordials in 12, 14 and 15 oz. sizes, which cannot be disposed of within the allotted time except at tremendous sacrifice. They have requested additional time in which to sell such containers on hand claiming that they cannot return them for credit, particularly to foreign manufacturers. It appears that, subject to proper safeguards, the best interests of the State will be furthered by making a reasonable extension.

Therefore:

1. The effective date of Rule #1 of May 3, 1934 is extended from May 17, 1934 to June 30, 1934.
2. Until midnight, June 30, 1934, retail licensees may sell alcoholic beverages for consumption off the licensed premises in bottles or other receptacles, containing not less than eight (8) fluid ounces, provided, that no sale may be made at any one time to any one person of less than sixteen (16) fluid ounces.
3. Effective immediately, no retail distribution licensee may purchase or permit delivery to him of any alcoholic beverages, other than beer and malt beverages, except in bottles or other receptacles, each containing at least 1 pint consisting of sixteen (16) fluid ounces.
4. No further extensions of time will be granted.

Dated: May 17, 1934.

D. Frederick Burnett,
Commissioner.

2. FEES - INVESTIGATION - COLLECTION OF ARREARS.

A Borough Clerk wrote to the Commissioner, as follows:

Mr. L. V. was granted a Temporary Plenary Retail Consumption License by the Mayor and Council of the Borough of ---- on December 12, 1933. He never paid the required fee, therefore did not get his license.

Should Mr. V. desire a license on July 1, 1934, would he have to pay the pro-rated fee of \$191.78 from December 12, 1933 to June 30, 1934 plus the required fee of \$350. for the year beginning July 1, 1934 to July 1, 1935 or could we issue a license on payment of \$350. our fee for one year?

Would he be required to make another application for the period July 1, 1934 to July 1, 1935?

The Commissioner replied:

New Jersey State Library

May 16, 1934.

Dear Mr.-----:

The application of L.V. should not have been accepted at all unless it was accompanied by the proper fee. Your Mayor and Council, however, have cured the initial error as far as possible by withholding delivery of the license. This is substantially the situation set forth in Bull. 15, item 1.

Assuming that having no license he has never been allowed to sell alcoholic beverages at all, there is nothing earned on the fee which he should have paid, except the municipality's 10% investigation fee. That is still due to your municipality.

Section 30 of the Control Act, as amended, provides that no license shall be issued to any person to whom a license shall have been issued under this Act who shall have failed to pay to any municipality any license fee which shall have accrued pursuant to the provisions of said Act. You are therefore wholly within your rights in refusing to issue any license to V. for the year beginning July 1st next unless he pays not only the full license fee for the coming year but also the \$19.18 investigation fee which accrued on December 12th last.

He will be required like every other applicant to make a new application for the period beginning July 1st next.

Very truly yours,

D. Frederick Burnett,
Commissioner.

3. CONTAINERS - UNDERSIZED - SALE BY CONSUMPTION LICENSEES
PERMISSIBLE.

May 17, 1934

Mr. C. M. Meek,
Colonial Inn,
Oceanport, N. J.

Dear Sir:-

The notice of May 3rd to which you evidently refer expressly states that nips serve a valuable purpose when sold in taverns for immediate consumption.

There is nothing in the rules of May 3rd or in the rules of May 17th which prohibits sales of alcoholic beverages in undersized containers, providing they are sold by consumption licensees for immediate consumption on the premises.

Very truly yours,

D. Frederick Burnett,
Commissioner

4. CONTAINERS - UNDERSIZED - SALES BY WHOLESALERS.

May 17, 1934

Harrison-Chandler, Inc.,
589 Ogden Street,
Newark, N. J.

Attention of L. Gayle Chandler, Esq.

Gentlemen:

I have yours of the 16th.

If the Orange Bitters and Cocktail Bitters which you mention are alcoholic beverages, they cannot be sold in 12 oz. bottles under the rules of May 3rd.

As per notice enclosed of even date, I have extended the time during which retailers can dispose of their undersized bottles, but this is limited to stock on hand and they are forbidden to accept any new deliveries. Consequently, you as a wholesaler must not after today make any sales or effect any deliveries of undersized bottles of any alcoholic beverages except beer and malt beverages, except to those licensees who may sell for consumption on the premises.

Thanks for your cooperation.

Very truly yours,

D. Frederick Burnett,
Commissioner

5. HOTEL - WHAT CONSTITUTES - REQUISITES

May 19, 1934

Mr. James Corona,
1 West Somerset Street,
Raritan, N. J.

Dear Sir:

I have your letter inquiring how many rooms are required for a dwelling to be listed as an hotel.

An hotel is not to be arbitrarily defined by the number of rooms it contains, but rather by the purposes which it serves.

The term as used in Sec. 76 contemplates a public house for the lodging and entertainment of travelers or wayfarers for a compensation. In short, an inn of the better class. It is to be distinguished from a tavern or a house of public entertainment that does not provide lodging, and from a boarding house which, while it provides lodging, is not a public house. The boarding house keeper may refuse accommodations to anyone he chooses. The innkeeper must entertain all travelers or wayfarers who are of good conduct and ready to pay the proper charges.

Very truly yours,

D. Frederick Burnett,
Commissioner.

6. APPELLATE DECISIONS - BUNNELL VS. TRENTON.

GEORGE BUNNELL,

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:

On December 7, 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. After the filing of his application and until midnight, February 5, 1934, appellant conducted his business at #33 North Stockton Street in regular course, upon the understanding that the filing of his application and the receipt for the payment of the license fee were equivalent to a temporary license.

Although members of the respondent Board were aware that applicants who held receipts evidencing payment of their license fees were conducting their business, they took no notice thereof and acquiesced in the understanding that the applicants could continue to do business until the expiration of temporary licenses.

Appellant complied with all the formal requirements pertaining to his application. It is not suggested that his application contained any false statements. The character and fitness of the applicant are unquestioned. The testimony together with the photographs introduced in evidence, established the suitability of the premises sought to be licensed and the change of position of appellant in reliance upon the understanding described above.

The respondent Board contends that the denial of appellant's application was justified in view of the resolution adopted on February 3, 1934 limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5, the limitation could not properly be applied to the appellant, and the action of the respondent Board in denying the application of the appellant is reversed.

Dated: May 19, 1934.

D. FREDERICK BURNETT,
Commissioner

7. APPELLATE DECISIONS - BORSCH VS. TRENTON.

The action of the Municipal Board of Alcoholic Beverage Control of Trenton in refusing to issue plenary retail consumption license to John Borsch at 654 Cass Street, Trenton, was reversed. The facts were substantially the same and the written opinion followed the reasoning in Berkelhammer vs. Trenton, Bull. 28, item 5. The conclusions were in the same form and language as in Bunnell vs. Trenton, item 6, supra.

The Appellant acted as his own Attorney. The Respondent was represented by Romulus P. Rimo, Esq.

8. APPELLATE DECISIONS - KETTERER VS. TRENTON.

The action of the Municipal Board of Alcoholic Beverage Control of Trenton in refusing to issue plenary retail consumption license to Joseph Ketterer at 668 South Broad Street, Trenton, was reversed. The facts were substantially the same and the written opinion followed the reasoning in Berkelhammer vs. Trenton, Bull. 28, item 5. The conclusions were in the same form and language as in Bunnell vs. Trenton, item 6, supra.

The Appellant was represented by John H. Kafes, Esq., and the Respondent by Romulus P. Rimo, Esq.

9. APPELLATE DECISIONS - LA FERRARA VS. TRENTON.

The action of the Municipal Board of Alcoholic Beverage Control of Trenton in refusing to issue plenary retail consumption license to Nicholas LaFerrara at 158 Kent Street, Trenton, was reversed. The facts were substantially the same and the written opinion followed the reasoning in Berkelhammer vs. Trenton, Bull. 28, item 5. The conclusions were in the same form and language as in Bunnell vs. Trenton, item 6, supra.

The Appellant was represented by Vincent A. deBenedetto, Esq., and the Respondent by Romulus P. Rimo, Esq.

10. APPELLATE DECISIONS - MASHBITZ VS. TRENTON.

The action of the Municipal Board of Alcoholic Beverage Control of Trenton in refusing to issue plenary retail consumption license to Robert E. Mashbitz at 19 Decatur Street, Trenton, was reversed. The facts were substantially the same and the written opinion followed the reasoning in Berkelhammer vs. Trenton, Bull. 28, item 5. The conclusions were in the same form and language as in Bunnell vs. Trenton, item 6, supra.

The Appellant was represented by Samuel Leventhal, Esq., and the Respondent by Romulus P. Rimo, Esq.

11. APPELLATE DECISIONS - CAPLAN VS. TRENTON.

MEYER CAPLAN,

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 for a plenary retail consumption license for the premises located at #170 South Broad Street, 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.

At the hearing, it appeared that in February, 1934, pending the appeal, the appellant filed a petition in bankruptcy and was adjudicated a bankrupt. Under the provisions of the Bankruptcy Act and the decisions thereunder, the interest of the appel-

lant in the premises sought to be licensed ceased upon his adjudication in bankruptcy and became vested in the trustee in bankruptcy thereafter appointed. Furthermore, it appeared that the equipment in the premises sought to be licensed had been repossessed by a chattel mortgagee and that the appellant has no interest therein nor in the premises located at #170 South Broad Street, Trenton, New Jersey.

For the reasons stated in Procoli vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, item #6, the appeal herein is dismissed.

D. FREDERICK BURNETT,
Commissioner

Dated: May 19, 1934.

12. APPELLATE DECISIONS - MOSS & CONVERY VS. TRENTON.

JACK MOSS & BOB CONVERY,	}	
Appellants		
-vs-	}	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,		CONCLUSIONS
Respondent.		

Joseph S. Bash, Esq., Attorney for Appellants.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, respondent issued a temporary license to appellants for the premises located at #502 South Warren Street, Trenton. Shortly after the issuance of the temporary license, the members of the respondent Board conducted an inspection of the premises and in the course of their inspection they discovered a slot machine containing coins. On January 29, 1934, respondent denied the application for permanent license. An appeal was duly filed from this action and has come on for hearing.

At the hearing the appellants admitted that prior to the passage of the Control Act on December 6, 1933, they maintained and knowingly permitted the operation of a slot machine on the premises sought to be licensed. They further admitted that after December 6, 1933 the slot machine, which was discovered by members of the respondent Board, was in their possession but denied that it was used or intended for use after December 6, 1933.

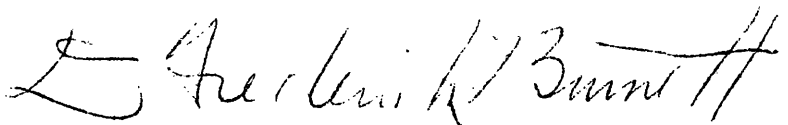
Our courts have repeatedly stated that maintenance of slot machines is unlawful and against public policy, Pure Mint Co. vs. La Barre, 96 N. J. Eq. 186 (Ch. 1924); Zaft vs. Milton, 96 N. J. Eq. 576 (Ch. 1924). Indeed, our statutes provide that the possession of any slot machine which may be used for the purpose of playing for money or other valuable thing is a misdemeanor, 2 C. S. p. 1766; Burgess vs. Drewen, 8 N. J. Misc. 179 (Sup. Ct. 1930).

Authority to dispense alcoholic beverages has at all times been recognized as a privilege, as distinguished from a right, which the issuing authority may deny for just cause. A determination by municipal issuing authority that just cause exists for the denial of an application should, on appeal, be given considerable weight.

The appellants contend that the respondent issued licenses to other applicants who possessed slot machines. While it is true that the testimony indicates that the respondent may have ignored evidence of possession by other applicants of slot machines prior to the creation of the respondent Board, no license was issued in any case where the respondent Board knew that the applicant possessed a slot machine thereafter. A member of the respondent Board testified that the slot machine possessed by appellants was discovered shortly after the local Grand Jury had been publicly charged with respect to the evils inherent to the operation of slot machines; that previous charges to the same effect had been ignored; that in the past new slot machines replaced confiscated machines; and that the continued possession by the appellants of a slot machine was another attempt to flaunt the law.

A discussion of cases in which applicants possessed slot machines prior to the enactment of the Control Act would have no pertinency here. Appellants' situation was dissimilar and it seems clear that respondent did not exceed its powers in denying their application. The repeated violations of law by the operation of the slot machine prior to the enactment of the Control Act together with its possession thereafter, was sufficient warrant for the respondent's determination that the public interest required a denial of the application.

The action of the respondent Board is, therefore, affirmed.



Dated: May 19, 1934.

Commissioner